APPENDIX A

Decision of the Supreme Court of Georgia Dated May 5, 1960

SUPREME COURT OF GEORGIA

Case No. 20851

ATLANTA NEWSPAPERS, INC., *et al.*,

—v.—

GRIMES, Sheriff, *et al.*

Decided May 5, 1960

By the Court:

1. No freedoms, including the freedoms of speech and press, are absolute.

2. Under Code § 24-104 every court has power to preserve and enforce order in its immediate presence, and as near thereto as is necessary to prevent interruption, disturbance, or hindrance to its proceedings, and to control, in furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto.

3. "Liberty of the press is subordinate to the independence of the judiciary and the proper administration of justice.".

4. Courts have the power to determine the manner in which they shall operate in order to administer justice with dignity and decorum, and in such manner as shall be conducive to fair and impartial trials and ascertainment of the truth uninfluenced by extraneous matters or distractions, and may stop conduct of representatives of the press in any field of activity interfering with orderly conduct of court procedure or creating distractions interfering therewith.

5. Discretion in regulating and controlling the business of the court is necessarily confided to the judge, who is invested with a wide discretion, and in the exercise of which this court should never interfere unless it is made to appear that wrong or oppression has resulted from its abuse.

6. Under the facts of the present case this court cannot hold that the trial judge abused the discretion vested in him by law in prohibiting the taking of pictures or recording of statements on the streets or sidewalks adjacent to the courthouse of any party, defendant, prosecutor, attorney, witness, juror, spectator, or other participant in or at any trial held in that particular division of the court until it shall have been completed, and all persons in attendance thereon shall have retired from the courthouse and adjacent sidewalks and public streets, and thereafter shall have disbursed, the order further providing that it shall in no wise prevent the press or public from taking shorthand or longhand accounts of all proceedings.

This case comes to this court because there was an equal division of the Judges of the Court of Appeals as to the judgment that should be rendered, Gardner, P.J., Townsend, and Nichols, JJ., being for affirmance, and Felton, C.J., Carlisle, and Bell, JJ., being for reversal.

On November 3, 1958, Hon. Durwood T. Pye, one of the Judges of the Superior Court of Fulton County, entered an order with respect to all proceedings in his division of the court, paragraph 3 thereof being as follows:

> "Additionally, the following, to wit: No photograph of any party to any trial or of any defendant, prosecutor, attorney, witness, juror, spectator, or other participant in or at any trial, shall be taken at any place in the courthouse building, on the courthouse steps, or on the adjacent sidewalks and public streets. Nothing done or said by any such person at any such place shall be recorded by any television instrument, moving-picture camera or other instrument, sound-scriber, tape recorder, wire recorder, or any other recording device or equipment. This Rule 3rd shall apply at all times during trials, and in respect of a particular trial, until it shall have been completed and all persons in attendance thereon shall have retired from the courthouse and adjacent sidewalks and public streets, and thereafter shall have dispersed."

On November 19, 1958, Atlanta Newspapers, Inc., a corporation engaged in publishing The Atlanta Journal and The Atlanta Constitution, Marion Johnson, a photographer employed by Atlanta Newspapers, Inc., and Georgia Press Association, a corporation of Fulton County, Georgia, organized to promote, protect, and advance the interests of its members consisting of about two hundred newspaper publishers, and the publisher of a monthly magazine, as petitioners, brought their petition against T. Ralph Grimes, as Sheriff of Fulton County, and the State of Georgia, by Paul Webb, Solicitor General of the Atlanta Judicial Circuit, as defendants, which petition was also served upon the Attorney General of Georgia, in which they alleged that paragraph 3 of the order above quoted is erroneous and invalid in that its enforcement denies to petitioners and other members of the public the liberty of speech and

liberty of press guaranteed by Article I, Section I, Paragraph XV of the Constitution of the State of Georgia (Code, Ann., § 2-115), which provides "No law shall ever be passed to curtail, or restrain the liberty of speech, or of the press; any person may speak, write and publish his sentiments, on all subjects, being responsible for the abuse of that liberty," and denies to them the right of freedom of the press and fairly using the press, in violation of Section I of the First Amendment to the Constitution of the United States (Code § 1-801), which provides: "Congress shall make no law . . . abridging the freedom of speech, or of the press"; and denies to petitioners the benefits of due process of law and deprives them of liberty and property without due process of law, and deprives them of equal protection of the law, in violation of the provisions of Section I of the Fourteenth Amendment to the Constitution of the United States (Code § 1-815), which provides, among other things, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." They prayed for process; that the court declare paragraph 3 of the order invalid; that the Sheriff has no duties to perform with reference to the enforcement of such order; that the petitioners are not barred from committing the acts prohibited by said order, and for general relief.

The case came on for trial before and was tried by the Judge who issued the order and who held that the petition was properly brought as a proceeding to modify, vacate, or set aside a rule prescribed by the court for the conduct of the business before it. The stipulations of fact, the evidence introduced, and the order and judgment of the trial court are all set out in the bill of exceptions, consisting of 250 pages. The final order and judgment, showing exhaustive research on the part of the trial judge, and a

learned discussion of the law dealing with the freedom of the press, freedom of speech, the right of the courts to prescribe and enforce rules looking to the orderly administration of justice, concludes with the following judgment:

> "The court holds that plaintiff's contentions have no merit. The court, upon full, careful and deliberate reconsideration of the legality, desirability and propriety of said Rule Part 3rd holds that said Rule Part 3rd is lawful, desirable and proper in every respect, and it is continued in force," and judgment is rendered against the plaintiffs for costs. To this judgment the plaintiffs except, it being stated on page 86 of the brief of counsel for plaintiffs in error: "Plaintiffs have taken exception only to that part of the order which bars the taking of pictures of spectators and other persons not in custody of the court, on the streets and sidewalks surrounding the Court House."

Hawkins, Justice. (After stating the foregoing facts.) 1-5. Many questions are dealt with in the opinion and judgment of the trial judge, consisting of 125 pages, and in the brief of counsel for the plaintiffs in error, consisting of 142 pages, which are not directly involved in the present case, such as the redress of libel, the power of the courts to punish for contempt, and the individual's right of privacy.

That the courts of this State have consistently sought to uphold and enforce the constitutional provisions relied upon by the plaintiffs in error is conclusively established, we think, by the decisions in the following cases: McGill v. State of Georgia, 209 Ga. 500 (74 S. E. 2d 78); Waters v. Fleetwood, 212 Ga. 161 (91 S. E. 2d 344); Ledger-Enquirer Co. v. Brown, 213 Ga. 538 (100 S. E. 2d 166); Townsend v. State, 54 Ga. App. 627 (188 S. E. 560); Ledger-Enquirer Co. v. Brown, 214 Ga. 422 (105 S. E. 2d 229). We heartily subscribe to the statement in some of

the decisions to the effect that the function of publicity in the form of newspaper reporting and comment as "an effective restraint on possible abuse of judicial power," is one of the fundamental safeguards of a free society. New York Post Corporation v. Leibowitz, 2 N. Y. 2d 677, 682 (143 N. E. 2d 256); In Re Oliver, 333 U. S. 257, 270 (68 Sup. Ct. 499, 92 L. ed. 682); Times-Picayune Publishing Co. v. United States, 345 U. S. 594 (73 Sup. Ct. 872, 97 L. ed. 1277); Pennekamp v. Florida, 328 U. S. 331 (66 Sup. Ct. 1029, 90 L. ed. 1295).

We also recognize that freedom of the press means freedom to gather news, write, publish, and circulate it, and that gathering news embraces photographing the news, printing of the photographs, and reproduction of the photographs in the finished newspapers, and as was held in Ex Parte Sturm, et al., 152 Md. 114, 123 (136 Atl. 312, 51 A. L. R. 356), "The privileges of the press under the law deserve the appreciative consideration of the judiciary. There are occasions when the vindication of those privileges depends upon judicial action. The high importance of the press as an agency of modern civilization is nowhere more freely recognized than in the courts of justice."

But we also call attention to what Mr. Chief Justice Duckworth, speaking for this court, said in McGill v. State of Georgia, 209 Ga. 500, 502, supra, that "In large measure the fate of individual freedom depends upon the maintenance of a free and independent press and independent courts with full power to compel obedience to court orders. These two in our system of popular government are given the high and noble mission of preserving freedom. Since the functions of the one complement the work of the other in the attainment of this common objective, it would be regrettable if at any time a claim of excessive power by either as relates to the other should be allowed to create a conflict between them. If either could destroy the other, it would thereby pull down upon its own head a fortress dedicated to the protection of the

freedom not only of the individual citizen but that of the destroyer also. The present case requires a decision marking the dividing line between the respective powers and rights of both." In Brumfield v. State of Florida, 108 So. 2d 33, 38, it is said: "There is little justification for a running fight between the courts and the press on this question of a fair trial and a free press. Both are basic and sacred concepts in our system of government. Both are in one Constitution and govern one nation of millions of individuals. All that is required to preserve both is for the press and the courts to place the emphasis on the Constitution instead of themselves."

Our Code § 24-104 provides: "Every court has power (1) To preserve and enforce order in its immediate presence, and as near thereto as is necessary to prevent interruption, disturbance, or hindrance to its proceedings . . . (4) To control, in furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto." In Carr v. State, 76 Ga. 592, 593 (2-c), this court held: "Discretion in regulating and controlling the business of the court is necessarily confided to the judge; and this court should never interfere with its exercise unless it is made to appear that wrong or oppression has resulted from its abuse." In Perryman v. State, 114 Ga 545, 546 (40 S. E. 746), this court said "it is a well-recognized principle of our law that the judges of superior and city courts are invested with a wide discretion in the management of the business before them, and this discretion will not be controlled unless it is shown to have been manifestly abused." See also in this connection Pearce v. State, 79 Ga. 437 (4 S. E. 849); Myers v. State, 97 Ga. 76, 98 (5) (25 S. E. 252).

In the matter of In Re Hearings Concerning Canon 35 of the Canons of Judicial Ethics, 132 Colo. 591, 593 (296 P. 2d 465, 467), it is said: "'No freedoms are absolute.' The freedoms of speech and press are not exceptions." Courts have the power "to determine the manner in which

they shall operate in order to administer justice with dignity and decorum, and in such manner as shall be conducive to fair and impartial trials and the ascertainment of truth uninfluenced by extraneous matters or distractions. If at any time the representatives of the 'press' in any field of activity interfere with the orderly conduct of court procedure, or create distractions interfering therewith, the court has the inherent power to put an immediate stop to such conduct." In McGill v. State of Georgia, 209 Ga. 500, 503, supra, this court held "liberty of the press is subordinate to the independence of the judiciary and the proper [illegible]inistration of justice." In Ex Parte Sturm, 152 Md. 114, 121, supra, it is said: "It is essential to the integrity and independence of judicial tribunals that they shall have the power to enforce their own judgment as to what conduct is incompatible with the proper and orderly course of their procedure," and to enforce rules so long as they bear a reasonable relationship to the aim sought: maintenance of the dignity of the court and the orderly administration of justice. This language in the Sturm case was quoted with approval in the more recent case In Re Mack, 386 Pa. 251, 258 (126 Atl. 2d 679), and in the Mack case it was held that the court could anticipate the taking of pictures and prohibit it beforehand. It is insisted by counsel for the plaintiffs in error that the rulings there made are not applicable here because the courts were there dealing with the question of taking pictures in the courtroom, while here the order complained of extends beyond the courtroom and to the sidewalks and streets adjacent to the courthouse. In Tribune Review Publishing Co. v. Thomas (3d Cir.), 254 F. 2d 883, 885, cited with approval by the Supreme Court of Florida in the Brumfield case, supra, it is said: "If a judge may, for the purpose of maintaining order and decorum, control the taking of pictures in his own court room it can hardly be sucessfully argued that his power stops when one closes the court-room door."

6. It appears from the record in this case that the order here complained of was entered on November 5, 1958, under the following circumstances: On October 12, 1958, a house of worship in Fulton County, known as "The Temple" was damaged by an explosion, and it was charged that the house of worship had been bombed. The occurrence was widely publicized. Five named persons were lodged in jail charged with the crime, and on October 14, 1958, they obtained issuance of the writ of habeas corpus, which was set to be heard on October 17, 1958. At about two or three o'clock on the afternoon of October 16, 1958, from the courthouse steps on Pryor Street, two counsel for these five men addressed a crowd gathered on the sidewalk and street, which addresses were recorded for radio and television, and collected on the sidewalk and on Pryor Street with the crowd were mobile units of television services, the cameras and equipment of the representatives of newspapers, radio and press services, and a large amount of photographic equipment of other individuals. On the morning of the 17th of October the Grand Jury indicted four of those previously arrested and another for a capital offense growing out of the alleged bombing of "The Temple," and the habeas corpus hearing was held at 2:00 o'clock. The applicants for habeas corpus were brought from the jail to the courthouse by the Sheriff's prison bus, which was parked on Pryor Street just south of the front steps of the courthouse, so that the five men, shackled to a chain, could be carried to the prisoners' elevator. As they were taken out of the bus, and thus shackled, they were photographed. Before the habeas corpus hearing the corridors outside the courtroom were crowded with people, including some twenty or twenty-five photographers representing commercial newspapers, radio and television interests. Recording devices, flash cameras, and sound recording equipment were located in the corridors. Pictures of the prisoners were taken in the corridors, and numerous pictures were made in the courtroom before the trial. Four of the prisoners were photographed shackled to their chain as they were

taken back to the jail following the hearing. Following the habeas corpus hearing, the same counsel again addressed the crowd from the courthouse steps, and this was recorded and carried on television and radio. On the occasion of one of these addresses 50 or 60 representatives of newspapers, television, radio, magazine and wire services and two to three hundred other people congregated on Pryor Street during the taking of pictures and completely blocked traffic on Pryor Street.

In addition to the wide publicity given to this case, there was under investigation before the Grand Jury charges against various public officials and employees of the State of Georgia wherein they were accused of misappropriating public funds and other offenses, which were also given wide publicity, including an indictment against the then Revenue Commissioner of the State, wherein he was charged with misappropriation of public funds, which cases were assigned for trial during th November Term, 1958, of that Division of Fulton Superior Court over which the judge who entered the order was to preside.

It is stipulated that there are 200 weekly newspapers, 31 daily newspapers, in the State, 3 commercial and 1 educational television station, and 13 radio stations in the City of Atlanta, and in the State, including Atlanta, there are 13 television stations, 112 radio stations, 2 national news services, and numerous news agencies.

The record discloses that the courtrooms in the Fulton County Courthouse begin on the second floor and extend to the sixth floor; that the courthouse is bounded on the north by Hunter Street, south by Mitchell Street, east by Central Avenue, and west by Pryor Street, and the distances from the sidewalks to the walls of the courthouse on the different sides of the courthouse square varies from 10 feet and 4 inches to 180 feet. When the foregoing facts are considered in the light of the rules of law above announced, we think the language used by the Supreme Court of Maryland in the Sturm case, supra, is peculiarly applicable

here, and we, too, hold that the duty and disposition of a court to accord a justly ample scope to the liberty of the press should not be carried to the point of an undue abridgment of the court's own freedom. There are proper spheres within which the courts and the press may operate without any conflict of interest or purpose. In this case the liberty of the press has been invoked in support of acts which the trial judge found were an invasion of the domain within which the authority of the court is exclusive. A due regard for the integrity of the judicial power forbids, and the legitimate interests of the press do not require, that such an encroachment should be sanctioned. Paragraph 5 of the order here involved specifically provides: "Each of these provisions will be liberally construed in the interest of orderly proceedings and impartial trials; and shall in no wise prevent the press or public from taking shorthand or longhand accounts of all proceedings, but, if necessary the number of persons so engaged will be regulated." We cannot hold that under these facts the trial judge has abused the discretion vested in him by law, or that the order complained of is invalid or erroneous for any reason assigned.

Judgment affirmed. All the Justices concur.

APPENDIX B

Decision of the Fulton Superior Court Dated April 14, 1959

FULTON SUPERIOR COURT

No. A-70730

(Petition for Declaratory Judgment)

ATLANTA NEWSPAPERS, INC., GEORGIA PRESS ASSOCIATION and MARION JOHNSON,

—vs.—

T. RALPH GRIMES, as Sheriff of Fulton County, Georgia, and STATE OF GEORGIA by Paul Webb, Solicitor General of the Atlanta Judicial Circuit.

OPINION, FINDINGS AND FINAL JUDGMENT AND DECREE

PREFACE AND DEMURRERS

The above case was tried before the Court without a jury on all questions of law and fact, commencing January 12, 1959, and concluding January 14, 1959, and after evidence and argument had, all questions were thereafter taken under advisement, including those raised by the separate demurrers of each of the defendants.

Ground 10 of the demurrers of T. Ralph Grimes, as Sheriff of Fulton County, filed December 9, 1958, is overruled, the Court holding that the first sentence of said ground correctly construes the Rule, and that the second sentence is an erroneous conclusion. Ground 10 of the

demurrers of Paul Webb, as Solicitor General, filed December 9, 1958, is overruled for the same reasons.

The petition alleges that it is brought in order to obtain a declaratory judgment, and the demurrers of both defendants challenge petitioners' right to proceed by application for declaratory judgment.

In order for a party to be entitled to have a judgment declaratory of his rights it must appear that a justiciable controversy exists between him and the defendant in such proceeding.

> "The authorities, so far as we have been able to find, are in agreement that the courts will grant declaratory relief only when there exists between the parties an actual controversy ripe for judicial determination. (Cits.) As to when an actual controversy is ripe for declaratory relief, we find in Borchard on Declaratory Judgments (2d ed.) p. 56, this statement of the rule: 'In general, it may be said that the facts on which a legal decision is demanded must have accrued, for the principle of a declaratory judgment is that it declares the existing law on an existing state of facts. The danger or dilemma of the plaintiff must be present, not contingent on the happening of hypothetical future events—and the prejudice to his position must be actual and genuine and not merely possible or remote.' This, we think, is a correct statement of the rule, and nothing contained in our Declaratory Judgment Act alters it; nor do we impute to the legislature any intention to do so."
>
> *City of Nashville* vs. *Snow*, 204 Ga. 371, 377.

In the case just cited it was said:

> "The general rule is that a court under a declaratory judgment proceeding does not have the right to determine whether a statute or ordinance is, abstractly, valid or invalid. (Cits.)."

These are applications of the principle that the courts of judicature do not render advisory judgments, but are organized for the trial of actual controversies. See, *Shippen* vs. *Folsom*, 200 Ga. 58 (4).

Implicit in the adjudications sought by the petitioners is: That in the carrying on of their businesses of publishing newspapers and operating radio and television stations, they have a "right" to utilize the public streets and sidewalks adjacent to the Fulton County Courthouse for the purpose of making sound recordings and photographs, and that a portion of the Rule of Court to the contrary as to participants in proceedings before the Court, should be annulled. If petitioners may lawfully utilize these public streets and sidewalks for their businesses, it would necessarily be in virtue of some privilege so to do, and not in virtue of any "right" which they have under the law. They are in a position similar to that of the taxicab operators in *City of Brunswick, et al.* vs. *Anderson, et al.*, 204 Ga. 515. There it was held that the claimed use of the city streets was a mere privilege and not a right under the law:

> "Being a privilege only, it does not come under the protection of the State and Federal Constitutions, since they protect rights alone. (Cit.) In a proper case, it is the intent and purpose of our Declaratory Judgment Act to settle and afford relief from uncertainty and insecurity with respect to rights and other legal relations between the parties. (Cit.) But it is not the function of the act to settle controversies, and make binding declarations, concerning a mere privilege. There must be in the controversy a legally protectible interest existing in virtue of some public law or ordinance."

On the other hand, the burden of petitioners' complaint is that a part of the Rule of the Court therein set out as Exhibit "A" is invalid, because, as petitioners allege, "its enforcement denies to petitioners and other members of the public the liberty of speech and liberty of the press

guaranteed by Article I, Section 1, Chapter 2, Paragraph 15 of the Constitution of the State of Georgia, codified in Georgia Code, Section 2-145, providing that 'No law shall ever be passed to curtail, or restrain the liberty of speech, or of the press: any person may speak, write and publish his sentiments, on all subjects, being responsible for the abuse of that liberty,' and denies to them the right of freedom of the press and fairly using the press, in violation of Section 1 of the First Amendment of the Constitution of the United States which provides that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances,' and said part of said order denies to petitioners the benefit of due process of law and deprives them of equal protection of the law, in violation of the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States, which provides, among other things, that 'No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'" (Par. 20) And petitioners seek a declaration that a portion of the Rule is invalid because in conflict with these provisions of the Constitutions of Georgia and of the United States.

As a result of the directions of His Honor Judge Claude D. Shaw, the trial of this case was had before the same Judge who entered the Rule complained of. See order entered in this case under date of December 18, 1958. This direction was not only in keeping with the practice, but was necessary here because the case involves construction of the Rule. See, *In the Matter of the Application of the Tribune Review Publishing Co.*, 379 Pa. 92, 113 Atl. (2d) 861 (4), holding: " . . . any action, whether in the nature of contempt proceedings or otherwise, which is brought to

test the validity of the rule complained of, should be initiated in the court of its authorship, so that that court may itself consider and pass upon the merits of the complaint, and this court, on appeal, may be aided by its opinion."

> "Generally speaking, the construction placed upon its own rules by a court of original jurisdiction is conclusive; and only in cases where it is clear that the construction given is wrong, and that injustice has been done, will the discretion of the judge of such a court construing its rules be interfered with by a reviewing court. 8 Am. & Eng. Enc. L. (2d ed.) 31, and cases cited."

Roberts vs. *Kuhrt*, 119 Ga. 704 (1);
Universal Match Co. vs. *Kendrix*, 94 App. 251, 255.

The fact that the case is tried before the Judge formulating the Rule for his own Court, not only enables the trial to proceed before the Judge whose responsibility it is to construe his own Rule, but also before the Judge who has authority to revoke or modify the Rule. If, in fact, the Rule which is here under attack be subject to the objections stated in plaintiffs' petition—if the Rule in fact be in violation of the Constitutions of the State of Georgia and of the United States—it would be the duty of the Judge to revoke the Rule.

The Court has authority at any time to review and reconsider the rules adopted for the conduct of its business. The Court has authority to give consideration to the averments of the plaintiffs' petition in this case, the answers of the defendants, the arguments of counsel on the trial, and the evidence adduced on the trial, for the purpose of determining whether as a matter of fact and law, there is any reason why the Rule is invalid. The Court has authority to treat the petition of the plaintiffs as a petition to the Court to set aside its own Rule, and to deal with it as such upon the allegations of the petition, the responses thereto and the evidence had on the trial.

The Court has therefore reached the conclusion that it should not rule upon said demurrers except as to said Ground 10, or rule upon them insofar as they raise questions as to the merits, or insofar as they relate to the question whether petitioners have a right under the law to maintain their petition for declaratory judgment, but that the Court, treating this case as a motion addressed to the Court to set aside its own Rule, should, in the light of all the pleadings and all the facts, make the findings of law and fact and the judgment and decree hereinafter stated.

The following must be considered:

1. What is the construction of the Rule? What is permitted under the Rule? What is forbidden thereby?

2. Are petitioners authorized to use the public streets and sidewalks adjacent to the Courthouse for their businesses? Do they have constitutional rights in the use of the public streets and sidewalks because they are engaged in the newspaper, radio and television businesses? Or is their use of the public streets and sidewalks subject to the same limitations as that of others?

3. Do liberties of speech and press confer upon petitioners the authority to demand of persons on the streets and sidewalks adjacent to the Courthouse, that they submit to the recording of what they may chance to say, or of interrogations of them by plaintiffs' employees? And that they submit to the photographing of their persons? If so, are there any limitations?

4. What is the right of privacy? Does a citizen have the right to walk the public streets and sidewalks adjacent to the Courthouse without being stopped and interrogated and his replies taken down on mechanical equipment? Or his chance remarks thus recorded? Does he have a right to be free from having his photograph taken for commercial purposes? What are the rights of an individual in the premises?

5. When a person attends court under the compulsion of its process as a witness or juror, does he thereby lose his right of privacy? Does the person or portraiture of such individual thereby come into the public domain? May his photograph be commercialized against his will? May he be interviewed against his will and his replies recorded and commercialized? Similarly, what is the situation of litigants before the Bar of the Court? What of the rights of privacy of attorneys, spectators and other participants in a trial?

6. May the stream of justice be poisoned during the trial?

7. What is the duty of the Court in respect of formulating rules to the end that the business of the court may be free from physical interference and that it may be conducted with dignity and decorum?

8. What is the duty of the Court in respect of formulating rules to the end that participants in trials before it may be accorded its protection?

9. What is the duty of the Court in respect of formulating rules to prevent interference of witnesses, parties and other participants in trials by interview and photography of them while in attendance upon the Court? And to prevent interference otherwise with the business of the Court?

Construction of Rule Dated November 3, 1958

It first should be said that this is a Rule of the Superior Court of Fulton County, and that it applies only to the sessions of the court presided over by Judge Durwood T. Pye. The Rule clearly states: "Notice will be taken of the following provisions in respect of all proceedings in this Division, and the Sheriff will enforce them, to-wit:" The words "this Division" relate to all proceedings presided over by said Judge, and not otherwise, having no effect whatever in respect of sessions of the Court presided over

by another Judge. The Judge formulating the Rule formulated it as a Rule of Court, but expressly made it apply only to the sessions or divisions of the Court over which he presided, i.e., the Judge did not undertake to make the Rule apply to any other Judge.

Sometimes, in proceedings in the Superior Court of Fulton County, and in the Order of Business, the word "Division" is used to designate the general nature of the business being heard by a particular Judge. In this sense the words "Civil Division", "Criminal Division", and "Pre-trial Division" are used. But the word "Division" is also used simply to designate the session of court being held and presided over by a particular Judge, irrespective of the nature or character of the business being tried before him: in the Rule here involved the words "this Division" are used in this sense.

The allegations of Paragraph 9 of the petition that the Rule prescribed "additional rules of court for the criminal division of Fulton Superior Court" is an erroneous construction: the Rule does not apply to all criminal cases tried in the Superior Court of Fulton County. As stated, it does not apply to any proceedings had in the Court before any Judge other than the Judge formulating the Rule, but it does apply to all proceedings of every nature and character, civil or criminal, jury or non-jury, presided over by him. For clarity, these statements are made at the beginning of this portion of the opinion. There will be some repetition of them.

This Rule is correctly set out in Exhibit "A" annexed to plaintiffs' petition. It is in five parts, which taken together, are designed to constitute one single Rule with reference to the subject matter, having as its purpose orderly proceedings and impartial trials, which purpose comprehends three distinct and related items, viz: (1) That the business of the Court may be free from interference, and that it may be conducted with that dignity and decorum befitting the high function of the administration of justice; (2) that suitors before the Court, prisoners before its Bar,

all parties in every kind of proceeding, jurors, witnesses, spectators and all participants in trials in the Court, may be accorded its protection; (3) the due process of the law.

The Rule applies to all Divisions of the Court presided over by us, while sitting in the Superior Court of Fulton County, and to every class of case coming on before us for trial in said Court, whether civil or criminal, with or without a jury, and whether at law, in equity, or otherwise. The Rule has no application whatsoever to any Division presided over by any other Judge of the Superior Court, whether of this or another Circuit, and has no application to another Judge of this or some other Circuit presiding for us or in our stead by our request or the Governor's designation. The Rule does not, as alleged in Paragraph 9 of the petition, apply to "the Criminal division of Fulton Superior Court": it applies only to "this Division", meaning all sessions of the Court presided over by us while sitting in the Superior Court of Fulton County: it is a Rule of the Superior Court, but applies only when the undersigned Judge is presiding in the Superior Court of Fulton County, and to the Court over which he is personally presiding.

The substance of the Rule is not new. It has always been the practice of our Division, though not reduced to written Rule. We had occasion to apply it twice prior to the November, 1958 Term: first, in the case of Commissioner vs. National Association for the Advancement of Colored People, John H. Calhoun, et al., when the Sheriff was directed to permit no photographs to be taken of respondent Calhoun at any place; second, in an habeas corpus proceeding brought by parents against an Atlanta hospital for the custody of their infant alleged to be unlawfully detained, when permission was refused plaintiff Atlanta Newspapers, Inc. to photograph the parents on the Courthouse steps.

On October 12, 1958 a House of Worship in Fulton County, known as The Temple, was damaged by an explosion, and it was charged that the House had been

bombed. The occurrence was widely publicized. George Allen Bright, Wallace H. Allen, Robert Bolling, Kenneth Chester Griffin, and Luther King Corley were lodged in jail charged with the crime, and on October 14, 1958 they obtained issuance of the writ of habeas corpus, which was set for hearing on the afternoon of the seventeenth in the north fourth floor courtroom. About two or three o'clock on the afternoon of October 16, from the Courthouse steps on Pryor Street, two counsel for these five men addressed a crowd gathered on the sidewalk and street. These addresses were recorded for radio and television and subsequently portrayed over one television and several radio networks. Collected on the sidewalk and on Pryor Street with said crowd were also mobile units of television services, and the cameras and equipment of the representatives of newspapers, radio and press services, and also a large amount of photographic equipment of other individuals.

On the morning of the seventeenth the Grand Jury indicted Wallace H. Allen, Kenneth Chester Griffin, George Allen Bright, Robert Bolling and one other under Code, Section 26-2303, which is a capital offense. The habeas corpus hearing was had at two o'clock. The applicants for habeas corpus were brought from the jail to the Courthouse by the Sheriff's prison bus, which was parked on Pryor Street just south of the front steps so that the five men, shackled to their chain, could enter the Courthouse south basement and be carried to the prisoners' elevator. As they were taken out of the bus on Pryor Street they were photographed.

Before the habeas corpus hearing, the corridors outside the courtroom were crowded with people, including some twenty or twenty-five photographers representing commercial newspapers, radio and television interests. Newsreel cameras, recording devices for the various radio stations and flash cameras and sound recording equipment were located in the corridors. Pictures of said prisoners were taken in the corridor. There was loud noise. One of the prisoners stated his objection to the taking of pictures in

the corridor, and was told it was too late. In the courtroom before the trial numerous pictures were made. The prisoners were photographed in the courtroom. Someone came in the courtroom and stated that pictures were not supposed to be taken, and one of the prisoners said, "It is a little late now to tell them." The prisoners, except Corley, who was released on the habeas corpus trial, were photographed shackled to their chain as they were taken back to jail after the hearing.

Following the habeas corpus trial said counsel again addressed a crowd from the Courthouse steps and this was recorded for and carried on television and radio.

Atlanta Newspapers, Inc. carried in the Atlanta Journal pictures of Bright, Allen, Corley, Griffin and Robert Bolling, taken in the courtroom as above stated. It also carried pictures showing Allen, Robert Bolling, Bright, Griffin and one other shackled to the chain.

The taking of the pictures in the corridor and courtroom was in violation of the written Rule 27, formally adopted by the Judges of the Superior Court of the Atlanta Judicial Circuit in commission April 20, 1951, for the Superior Court of Fulton County:

> "(27) BARRING OF PHOTOGRAPHS. No pictures or photographs shall be taken in the court rooms, witness rooms, jury rooms, entrances to the court rooms and passageways to and from the witness rooms and jury rooms. This rule shall apply at all times whether or not the Court shall be in session or recess."

As to the circumstances of the addresses from the Courthouse steps, Mr. Essley B. Burdine testified in part, in addition to his testimony on subjects already referred to, as follows:

> "I made two. The first one was on Thursday at about . . . 2:00 or 3:00 o'clock in the afternoon and the second one was on Friday subsequent to the writ of [redacted]eas corpus hearing. . . .

"Q. Did a large crowd gather on the sidewalks and on the steps at each of those addresses? A. On Thursday I would estimate that there were probably 50 to 60 newspaper men. By newspaper men I mean representatives of both television, radio, newspapers, magazines and the wire services, plus probably a couple of hundred other people. As soon as they saw the attraction, of course, they gathered.

"Q. They were collected on the steps and on the sidewalks immediately in front of the steps on Pryor Street? A. Yes, sir.

"Q. Were these cases widely publicized? A. Tremendously so.

"Q. Had crowds collected here at the Court House and on the adjacent streets and sidewalks? A. Yes, sir.

"Q. Before the indictment was returned? A. Yes, sir.

"Q. And regularly thereafter? A. Yes, sir.

(Before the habeas corpus hearing) there had been a lot of newsreels and taking of pictures of Mr. Venable and me on the way to Court, and awaiting the prisoners to come up on the elevator.

"Q. Mr. Burdine, directing your attention to the taking of photographs outside the Court House, were those occasions, or not, attended by crowds of people? A. Yes, sir.

"Q. Could you give us any estimate of the group or the number of people who congregated to witness the taking of photographs of your clients? A. Yes, sir, I would give an estimate, . . . but do you also want to include the one that were hanging out the windows?

"Q. Yes, sir. I was going to ask you that next. Where were they? A. At the beginning, of course, all of the newspaper and radio and TV and newsreel personnel were there, but of course, this attracted a crowd and I would say some two or three hundred people congregated.

"Q. Where did those people come from, if you know? A. All I could tell you, sir, is I look around and they were coming from every direction.

"Q. Now, where were they? A. Along Pryor Street here.

"Q. Were they on the street or the sidewalk? A. Both.

"Q. Were they actually in the street? A. Yes, sir.

"Q. What effect, if any, did the crowd have on traffic and pedestrians using the street and sidewalk? A. It had no effect on the pedestrians, I don't think, but traffic was at a standstill.

"Q. Could pedestrians make their way up and down the sidewalk? A. I think probably they would have had to step out into the street.

"Q. Over what period of time did that condition take place? A. About 20 minutes.

"Q. Now, with respect to the instances in the Court House, were they, or not, attended by crowds of people? A. Yes, sir.

"Q. Could you give us an estimate of how many people came around to witness the taking of pictures in the Court House when your clients were photographed? A. I couldn't give an estimate as to the ones witnessing the taking of pictures, because I am sure some were there through idle curiosity and some through the fact that they probably wanted to view these various individuals and some through their religious beliefs, but there was a great number of people both in the hall and in the Court room. In fact, the Court room was what I would say full, and, of course, the adjoining corridors were also.

"Q. Was there any noise or conversation or shouting out in the street? A. Yes, sir. Of course, that goes along with that type of thing, I think because they are asking—

• • • • •

"Q. On the occasion when the pictures were made of your clients which you have just testified about, and I

am directing all of my questions to his prior testimony and to the taking of pictures of his clients, on those occasions was there any noise and loud talking? A. Of course, the afternoon that I testified about as to the street, none of my clients were present. The times I am speaking of my clients were present was upstairs in the Court room at the time of the hearing on the writ of habeas corpus."

On October 22, 1958, the defendants so indicted filed demands for trial, and it was contemplated that their cases would be placed on the calendar during the November Term. Also to be tried on demand during that Term was the case of State v. T. V. Williams, in which the State was expected to have about two hundred witnesses and the defendant thirty-five or forty witnesses. Other cases were to be tried in due course during the November Term. The Williams case had been the subject of wide comment, interest and speculation in the press and other media of public information. It, however, was dwarfed in these respects by that charging the bombing of The Temple. That case was the subject of notoriety not only in this Country, but abroad, and it had been commented on publicly by many officials, including the President of the United States.

Under the system of rotation of business prevailing among the Judges of the Atlanta Judicial Circuit as to the business of the Superior Court of Fulton County, we were to preside in the trial of criminal cases and have charge of making the criminal calendars during the November 1958 Term. As that Term approached and it was determined that the cases above referred to were to be tried before us, it seemed desirable to reduce to writing the practice in our Division, and accordingly the Rule dated November 3, 1958 was prepared, and on that date it was entered as an order of the Court.

Part 1st. of the Rule is in the language of Rule 27, referred to above, adopted April 20, 1951 by the then Judges of this Circuit, to-wit:

"Barring of Photographs. No pictures or photographs shall be taken in the court rooms, witness rooms, jury rooms, entrances to the court rooms and passageways to and from the witness rooms and jury rooms. This rule shall apply at all times whether or not the Court shall be in session or recess."

This part of the Rule is not limited as to person or object. It forbids the taking of any picture or photograph of any person or of any object or thing at any time, whether the Court be in session or recess, in any courtroom, witness room, jury room, or any entrance to any courtroom or any passageway to and from the witness rooms and jury rooms.

Part 2nd. is as follows:

"*2nd.* Additionally, the following to-wit:

"Equipment for taking photographs, sound recording devices, television equipment, moving-picture devices, sound-scribers, tape recorders, wire recorders and other recording devices shall not be brought into the court rooms, witness rooms, jury rooms, entrances to the court rooms, and passageways to and from jury rooms and witness rooms. This shall apply at all times whether or not the Court shall be in session or recess."

This part of the Rule simply forbids bringing any stated equipment into the entrances and passageways designated, at any time, whether the Court shall be in session or recess. Included within its object is enforcement of Part 1st., and to keep the rooms, entrances and passageways clear of this equipment so that they may be utilized for the transaction of the business of the Court.

Part 3rd is as follows:

"*3rd.* Additionally, the following, to-wit:

"No photograph of any party to any trial, or of any defendant, prosecutor, attorney, witness, juror, spectator, or other participant in or at any trial, shall be taken at any place in the courthouse building, on the

courthouse steps, or on the adjacent sidewalks and public streets. Nothing done or said by any such person at any such place shall be recorded by any television instrument, moving-picture camera or other instrument, sound-scriber, tape recorder, wire recorder, or any other recording device or equipment. This Rule 3rd. shall apply at all times during trials and in respect of a particular trial, until it shall have been completed and all persons in attendance thereon shall have retired from the courthouse and adjacent sidewalks and public streets, and thereafter shall have dispersed."

This part of the Rule is limited as to (1) place, (2) person, (3) time, and (4) acts forbidden.

The place covered by the Rule is the Courthouse Building, (which includes the whole of the Courthouse lot and all buildings thereon) the Courthouse steps, and the adjacent sidewalks and public streets. No other place is within the ambit of the Rule. The sidewalks and public streets adjacent to the Courthouse are the following:

Pryor Street and both its sidewalks from its intersection with Hunter Street south to its intersection with Mitchell Street: Mitchell Street and both its sidewalks from its intersection with Pryor Street east to its intersection with Central Avenue; Central Avenue and both its sidewalks from its intersection with Mitchell Street north to its intersection with Hunter Street· Hunter Street and both its sidewalks from its intersection with Central Avenue west to its intersection with Pryor Street: the sidewalk on the west side of Pryor Street includes that sidewalk as extended onto the sidewalk at the northwest corner of Hunter and Pryor Streets a distance north on Pryor Street equal to the width of the sidewalk on the north side of Hunter Street, and, also, said west Pryor Street sidewalk as extended onto the sidewalk at the southwest corner of Pryor and Mitchell Streets a distance south on Pryor Street equal to the width of the sidewalk on the south side of Mitchell

Street: the sidewalk on the east side of Pryor Street includes that sidewalk as extended onto the sidewalk at the northeast corner of Pryor and Hunter Streets a distance north on Pryor Street equal to the width of the sidewalk on the north side of Hunter Street, and, also, said east Pryor Street sidewalk as extended onto the sidewalk at the southeast corner of Pryor and Mitchell Streets, a distance south on Pryor Street equal to the width of the sidewalk on the south side of Mitchell Street: The sidewalk on the west side of Central Avenue includes that sidewalk as extended onto the sidewalk at the northwest corner of Hunter Street and Central Avenue a distance north on Central Avenue equal to the width of the sidewalk on the north side of Hunter Street, and, also, said west Central Avenue sidewalk as extended onto the sidewalk at the southwest corner of Central Avenue and Mitchell Streets a distance south on Central Avenue equal to the width of the sidewalk on the south side of Mitchell Street: the sidewalk on the east side of Central Avenue includes that sidewalk as extended onto the sidewalk at the northeast corner of Central Avenue and Hunter Streets a distance north on Central Avenue equal to the width of the sidewalk on the east side of Central Avenue, and, also, said east Central Avenue sidewalk as extended onto the sidewalk at the southeast corner of Central Avenue and Mitchell Street a distance south on Central Avenue equal to the width of the sidewalk on the south side of Mitchell Street: the sidewalk on the east side of Pryor Street and the sidewalk on the north side of Mitchell Street include the area now occupied by a covered wooden walkway about 169 feet on Pryor Street and about 176 feet on Mitchell Street, this covered wooden walkway for the time being constituting the sidewalk: the extensions of the sidewalk on the east side of Pryor Street and the sidewalk on the north side of Mitchell Street above mentioned refer to said sidewalks as extended by their normal width and before said wooden walkways were built for the construction of the Civil and Criminal Courts Building. (Included within the Rule as a part of the Courthouse

Building as above stated, is the walkway on the Courthouse lot running from the sidewalk on the south side of Hunter Street to the sidewalk on the north side of Mitchell Street.) *Said adjacent sidewalks and public streets as stated constitute the Courthouse Square.*

The persons under the protection of the Rule are parties, including defendants in criminal proceedings, as well as plaintiffs, defendants and other parties in civil actions; prosecutors in criminal proceedings; witnesses; jurors, attorneys; spectators: and all other participants in trials. Included within the protection of the Rule are infants, and other persons alleged to be under disability, while in attendance upon the court in habeas corpus or other proceedings involving their custody or their property. In order for a person to be under the protection of the Rule he must be in attendance on the court or on his way to or from the court incident to attendance thereon. No person not so connected with the proceedings of the court is under the protection of the Rule. But a person attending court with reference to a case on the calendar of business before the court does not cease to be under the protection of the Rule because the case is not actually reached for trial; but such person remains under its protection, until the scheduled trial of the case is completed.

As to time, the Rule states that it shall apply at all times during trials, and in respect of a particular trial, until it shall have been completed, and all persons in attendance thereon shall have retired from the Courthouse and adjacent sidewalks and public streets and thereafter shall have dispersed. The Rule covers all the time from the opening of Court in the morning until the adjournment of the Court for the day, and additionally, commences as to time when persons under the protection of the Rule enter the Courthouse Square for the purpose of attending Court; and as to time, it also embraces that period of time after the adjournment of Court for the day during which persons under the profection of the Rule are leaving the Courthouse and the Courthouse Square, and the Rule continues until they

shall have dispersed and departed the Square. The rule does not cover other times than those stated. For example, if no trial were in recess, and on a particular day no trial was conducted or on the calendar for that day, such day would not be within the time covered by the Rule. After the adjournment of Court for the day, and after persons under the protection of the Rule had departed the Courthouse Square, the Rule would be inapplicable, and would not again come into play until such time during the following morning as some person under the protection of the Rule entered the Courthouse Square.

The acts forbidden are (1) photographing a person under the protection of the Rule during the time when the Rule is in operation and while the person is in the Courthouse Building, on the Courthouse steps or on the Courthouse Square; (2) recording by mechanical device or equipment the sayings of those under the protection of the Rule at such places during the time the Rule is effective. So far as the Rule itself is concerned, there is no prohibition as to photographing any person outside the Courthouse Square, nor is there any prohibition in respect of mechanical recordings of sayings of any such person outside the Courthouse Square. This, of course, does not mean that it is lawful to interfere at any time or place with witnesses and others participating in trials; but *the Rule itself* is carefully limited.

Part 4th is as follows:

> "*4th.* Additionally, the following, to-wit:
>
> "No photographs will be taken of the jury or of any juror or of any officer in attendance on the jury or a juror at any time or place. Nothing said at any place by any juror or any officer in attendance on a juror or the jury shall be recorded by any of the devices aforesaid or otherwise recorded."

Part 5th is as follows:

> "*5th.* Each of these provisions will be liberally construed in the interest of orderly proceedings and im-

partial trials; and shall in nowise prevent the press or public from taking shorthand or longhand accounts of all proceedings, but, if necessary, the number of persons so engaged will be regulated."

Thus, as one of the purposes of the Rule is to prevent publication of photographs and sound recordings taken as prohibited, any person so publishing would be in violation of the Rule. The Rule does not relate to the time of publication of the trial proceedings.

Some Authorities Collected on the Subjects of Liberties of the Press and of Speech, and the Liberty of Silence and the Right of Privacy.

"The liberty of the press," says Blackstone, "is indeed essential to the nature of a free state: but this consists in laying no previous restraints upon publications, and not in freedom from censure from criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequent of his own temerity. To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion and government. But to punish (as the law does at present) any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty. Thus, the will of individuals is still left free: the abuse only of that free will is the object of legal punishment. Neither

is any restraint hereby laid upon freedom of thought or inquiry: liberty of private sentiment is still left; the disseminating, or making public, of bad sentiments, destructive to the ends of society, is the crime which society corrects."

Commentaries, Vol. IV, Pages 151, 152.

General Alexander Hamilton's often quoted formula, stated by him in his argument in the New York case of *People* vs. *Croswell,* 3 Johns. (N. Y.) 337, which was a prosecution for newspaper libel of Thomas Jefferson while President, is: "The liberty of the press is the right to publish with impunity, truth, with good motives, for justifiable ends, though reflecting on government, magistracy, or individuals."

This definition was adopted by Justice Kent in his opinion in that case concurred in by Justice Thompson, during which it was said:

"As a libel is a defamatory publication, made with a malicious intent, the truth or falsehood of the charge may, in many cases, be a very material and pertinent consideration with the jury, in order to ascertain that intent. . . . And what can be a more important circumstance than the truth of the charge, to determine the goodness of the motive in making it, if it be a charge against the competency or purity of a character in public trust or of a candidate for public favor, or a charge of actions in which the community have an interest, and are deeply concerned? . . . At the same time, this doctrine will not go to tolerate libels upon private character, or the circulation of charges for seditious and wicked ends, or to justify exposing to the public eye one's personal defects or misfortunes. The public have no concern with, nor are they injured by, such information, and the truth of the charge would rather aggravate than lessen the baseness and evil tendency of the publication . . .

"I am far from intending . . . by the freedom of the press, a press wholly beyond the reach of the law, for this would be emphatically Pandora's box, the source of every evil. . . . Against such a commentary upon the freedom of the American press, I beg leave to enter my protest. The founders of our governments were too wise and too just ever to have intended, by the freedom of the press, a right to circulate falsehood as well as truth, or that the press should be the lawful vehicle of malicious defamation, or an engine for evil and designing men, to cherish, for mischievous purpose, sedition, irreligion, and impurity. Such an abuse of the press would be incompatible with the existence and good order of civil society. The true rule of law is, that the intent and tendency of the publication is, in every instance, to be the substantial inquiry on the trial, and that the truth is admissible in evidence, to explain that intent, and not in every instance to justify it. I adopt, in this case, as perfectly correct, the comprehensive and accurate definition of one of the counsel at the bar (Gen. Hamilton), that the liberty of the press consists in the right to publish, with impunity, truth, with good motives, and for justifiable ends, whether it respects government, magistracy, or individuals."

Chief Justice Lewis, in his opinion in the Crowell case, concurred in by Justice Livingston, stated the common law rule that the truth was no justification, and saw no occasion under the facts to determine whether the truth was admissible to illustrate the intent of the defendant, as held by Justices Kent and Thompson.

The two opinions in this case examine the English decisions in detail. An interesting historical essay on the libel law of England is at History To-Day, July, 1958, Vol. VIII, No. 7, p. 453. In passing it is worthy of note that three Georgia counties are named for personages who played important parts in the development of this subject:

Camden, for Charles Pratt, Earl of Camden, who was Chief Justice and Lord Chancellor; Glynn, for Mr. Serjeant John Glynn; and Chatham, for William Pitt, Earl of Chatham.

> "The true liberty of the press is amply secured by permitting every man to publish his opinion; but it is due to the peace and dignity of society, to inquire into the motives of such publications, and distinguish between those which are meant for use and information, and with an eye solely to the public good, and those which are intended merely to delude and defame. To the latter description it is impossible that any good government should afford protection and immunity."
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> *Republica* vs. *Oswald*, 1 U. S. 319, 1 Dallas 319, 326; 1 Law. Ed. 155, 1 Amer. Dec. 246.

Judge T. M. Cooley in his *Constitutional Limitations*, (8th Ed.), Vol. 2, page 886, says:

> "The constitutional liberty of speech and of the press, as we understand it, implies the right to freely utter and publish whatever the citizen may please, and to be protected against any responsibility for so doing, except so far as such publications, from their blasphemy, obscenity, or scandalous character, may be a public offense, or as by their falsehood and malice they may injuriously affect the standing, reputation or pecuniary interests of individuals."

The *Constitution, Article I, Section I, Paragraph XI*, provides:

> "No law shall ever be passed to curtail, or restrain the liberty of speech, or of the press; any person may speak, write and publish his sentiments, on all subjects, being responsible for the abuse of that liberty."

And in *Section II, Paragraph I*:

> "In all prosecutions or indictments for libel the truth may be given in evidence, . . . "

"In all cases of indictment for a libel, the person prosecuted shall be allowed to give the truth in evidence."

Code, Section 26-2103.

"The truth of the charge made may always be proved in justification of the libel or slander."

Code, Section 105-708.

At the common law a prosecution for a criminal libel could be defended against only by showing that the publication was made with good motives and justifiable ends. One had no right to fish in the sewer and sell the catch. It was not lawful to maliciously publish a criminal libel when the publisher had no justifiable ends to serve, and the mere fact that the libel was true did not authorize it. As stated by the Supreme Court of Connecticut in *State* vs. *McKee*, 73 Conn. 18, 22, 84 Amer. State Reports, 134, "There is no constitutional right to publish every fact or statement that may be true." The McKee case was a prosecution under a statute making it penal to sell, offer to sell, lend or give away a publication principally made up of criminal news, police reports and pictures and stories of bloodshed, lust and crime. At common law, however, the truth was a complete defense in a civil action.

The following analysis of the law in the American States on truth as a defense to libel is made in *Thayer's Legal Control of The Press*, Third Edition, pages 336, 337: Truth alone is a defense in civil libel cases in thirty-four states. Truth is a defense in civil libel when published with good motives for public information but without malice, or in good faith on a proper occasion and for a justifiable purpose, in thirteen States. Truth alone is a defense against criminal libel in five States. By constitutional provision truth may be given in evidence in criminal libel cases in seven States. Truth is a defense in criminal libel cases when published with good motives with justifiable ends in thirty-eight States. In the District of Columbia to be a

defense truth must be published with good motives and with justifiable ends in both civil and criminal libel. In New Hampshire there is no constitutional or statutory provision in regard to the defense of truth so far as criminal libel is concerned; publication with good faith is required as a defense in civil libel cases.

In Georgia the truth is a complete defense against a civil action. Where truth is a defense in criminal libel it is not because the publication was rightfully made but because the law declines to punish therefor. It is immaterial here whether in Georgia the constitutional provision that in prosecutions for libel the defendant shall be permitted to give the truth in evidence means that the truth is an absolute defense, or whether it means that the truth is a defense when published with good motives and justifiable ends. See, *Graham* vs. *State*, 7 App. 407; *Alumbaugh* vs. *State*, 40 App. 15.

A fair and honest report of court proceedings is conditionally privileged and may be published without liability to injured persons, if the publication is bona fide and without malice. *Code, Section 105-704.* See, *Atlanta Journal Co.* vs. *Doyal*, 82 App. 321; *Cook* vs. *Atlanta Newspapers, Inc.*, 98 Apps. 818.

In *State* vs. *Evjue*, 253 Wis. 146, 33 N. W. (2d) 305, there was upheld the validity of the Wisconsin statute forbidding the publication of the identity of a female who may have been raped or subjected to any similar criminal assault. During the course of the opinion the Supreme Court of Wisconsin said:

> "As has already been stated, this statute is intended to protect the victim from embarrassment and offensive publicity which no doubt have a strong tendency to affect her future standing in society. In addition to that it is a well-known fact that many crimes of the character described go unpunished because the victim of the assault is unwilling to face the publicity which would follow prosecution. The feelings of a female under such circumstances can easily be imagined but

they are difficult to describe. It is a matter of common knowledge that many people go to great lengths to keep their names out of the paper with regard to the violation of a parking ordinance. The desire for no publicity in a case such as the statute deals with must be multiplied and for much better reasons must be many times that of the violator of a parking ordinance."

The similar Georgia statute is at *Code, Section 26-2105.* In *U. S.* vs. *Holmes,* Fed. Cases No. 15,383; 1 Wall. Jr. 1, the presiding Judge issued the following order:

"We have, however, the power to regulate the admissions of persons and the character of proceedings within our own bar; and, as the court perceives several persons apparently connected with the daily press, whose object, we presume, is to report the proceedings and evidence in this case, as it advances, the court takes occasion to state that no person will be allowed to come within the bar of the court for the purpose of reporting, except on condition of suspending all publication till after the trial is concluded. On compliance with this condition, and not otherwise, the court will direct that a convenient place be afforded to the reporters of the press."

This was a prosecution of a seaman for manslaughter arising out of the casting into the sea from the long boat of the ship William Brown, fourteen male passengers, but none of the crew, as the long boat was on the high seas following the wreck of the ship.

The Supreme Court of Florida, in the course of its recent decision in *Philip B. Singer, Appellant,* vs. *State of Florida, Appellee,* 109 Sou. (2d) 7, 14-17, took occasion to say:

"(4) In this case, as in most of those cited above, one of the grounds of the motion for change in venue was that newspaper publicity had inflamed the minds of

the public against the accused. As pointed out in those and other cases such publicity has been held to not necessarily require a change of venue, since, in this day of extended distribution of news, a sensational crime incurs great publicity not only in the county in which it occurred but throughout most, if not all, of the State. In such cases it would be difficult to find a county in which the residents thereof had not heard or read of the crime and formed opinions thereon. See Shockley vs. United States, 9 Cir., 1948, 166 F. 2d. 704, 709, certiorari denied 334 U. S. 850, 68 S. Ct. 1502, 92 L. Ed. 1773.

"The difficulty of preserving to one accused of crime a trial by a fair and impartial jury made up of jurors who '. . . come to the investigation of each case free from any preconceived impression of it whatever', as we said they should in Lamb v. State, 1926, 90 Fla. 844, 107 So. 530, 533, has increased in direct proportion to the admirable progress made by the various news media in increasing the range, intensity and effectiveness of the gathering and dissemination of news of events. The effect of publicity given crimes, in all their details, including statements of witnesses, prosecuting and enforcement officials, statements and confessions attributed to the accused, and other incidents, all of which connect or tend to connect the accused with commission of the crime or, in some cases, create public opinion in favor of the innocence of the accused, is without question one of the most perplexing problems in the administration of criminal justice in this State and in this Nation. Yet while the problem, which incidentally is not new, cries aloud to every democratic institution for solution, we in this State and Country have totally failed in solving it; rather, it has worsened.

"The crux of the problem was aptly stated by Lord Ellenborough in Rex vs. Fisher, 2 Camp. 563, 170 Eng. Rep. 1253 (K. B. 1811), when he said:

"'If any thing is more important than another in the administration of justice, it is that jurymen should come to the trial of those persons on whose guilt or innocence they are to decide, with minds pure and unprejudiced. Is it possible they should do so, after having read for weeks and months before ex parte statements of the evidence against the accused, which the latter had no opportunity to disprove or to controvert?...'

"To those who are concerned with the administration of criminal justice, both generally and in individual cases, it becomes increasingly evident that pretrial publication of matters affecting the guilt or innocence of a named individual of a crime actually impairs the ability of the State to furnish a trial 'by an impartial jury' as intended to be guaranteed under Sec. 11, Declaration of Rights, Fla. Const., F. S. A. By their decisions this Court and others have evaded solution of the problem by holding that such publicity does not in itself require a change of venue, not on the ground that the accused's rights have not been impaired, but rather that because of widespread publicity the citizens of the other counties of the State have been exposed to the same knowledge of the case and therefore jurors drawn in any other county would be as likely to have extrajudicial knowledge and opinions as those in the county of the crime.

"As long as the Constitution of this State guarantees an accused trial by 'an impartial jury' the people of this State through their government in all its branches at all levels and all the institutions fostered or permitted under it are solemnly bound to do that which is necessary to preserve such a trial to every accused, whether he be guilty or innocent.

"This responsibility cannot be escaped nor can failure to furnish such a trial be excused on the ground that under existing conditions publicity given crimes, particularly sensational crimes, is so generally dis-

seminated that it is impossible to empanel a jury of persons who are free from knowledge of the crime and of preconceived opinions of the guilt or innocence of the accused. Rather the answer is to remove the condition which creates the extra-judicial knowledge and preconceived opinions.

"The certain way to do this is to follow the practice of the English system under which the courts have held it to be a contempt for newspapers to engage in pretrial comment on the events, facts, statements or investigations involving a crime, insofar as such comment tends to affect the determination of pending causes. See 8 Halsbury's Laws of England (3d Ed. 1954), Contempt of Court, Sec. 2, pp. 9-10; Goodhart, Newspapers and Contempt in English Law, 48 Harvard Law Review 885 (1935). France follows a similar course. There newspapers may report about the public proceedings only; what precedes them as a rule may not be published. Similar restrictions exist in other European countries involving criminal proceedings. In each country the intended purpose is to prevent the premature influencing of jurors and judges and the resulting impairment of the orderly processes of a fair and impartial trial on the basis of evidence submitted solely during the official proceedings. Rothenberg, The Newspaper (1948).

"But under the American system of administration of justice our courts have, except in rare instances, failed to utilize the law of contempt by publication; and our legislatures have not seen fit to pass statutes which would restrict the publication of pre-trial events affecting criminal matters, but rather the trend has been to grant the press the right to publish such matters irrespective of the harmful result on the rights of trial by an impartial jury. See Sullivan, Contempts by Publication, (3d. Ed. 1941), Part Three, a Comparison of the Functioning of the Law of Contempt by Publication in England and America. Also see con-

curring opinion of Justice Frankfurter in Pennekamp vs. State of Fla., 1946, 328 U. S. 331, 357 et seq., 66 S. Ct. 1029, 90 L. Ed. 1295, for a learned and logical discussion of the English system and the trial by newspaper in this country.

"Rather than resort to use of its power to punish by contempt publication of matters which affect the ability of the State to furnish a trial by an impartial jury, we think the courts should first call upon those who operate the media of news to consider their responsibility, under the constitutional guarantee of the free press which is theirs, to preserve the guarantee of trial by an impartial jury, which guarantee belongs to every person accused of crime and which is of equal importance to that of the free press. No institution of democratic government should be more interested in carefully and fully preserving constitutional guarantees than the press itself for such is one of the grounds, if not the principal ground, for the existence of a free press.

"The basic reason for the free press is that discussion of public matters necessary to enable the people to reach sound conclusions based on knowledge and thereby to intelligently exercise their rights and duties as citizens. No one can question that a free press is as essential to the maintenance of our democratic government as the arm is to the hand.

"But while the intelligent exercise of the rights and duties of citizenship requires that the organs of the news inform the people of events which transpire about them, the guarantee of trial by 'an impartial jury' requires that those called for jury duty will come to the trial of the cause free of knowledge of the events related to the cause and that their actions as jurors be based solely on evidence and argument in open court and the law applicable. Therefore, the publication of the details of the commission of crimes, especially as they connect or tend to connect a named person with guilt therefor or to establish the innocence of a named

person, not only is not required in the public interest, but the preservation of the constitutional guarantee of trial by an impartial jury requires that such publication not be made. This limitation on the publication of such details of criminal cases would in no wise curtail the fullest discussion of public issues generally.

"Responsible newspaper publishers have long recognized the need for restriction on pre-trial publication of details of criminal events, but the gathering and publication of news is as competitive a business as are the other facets of free enterprise and it is difficult for competitors to reach accord on a matter, important as it may be, which would affect their business interests. Nevertheless, in a spirit of traditional American cooperation we call upon those who in this State exercise the privilege of freedom of the press to turn their attention toward this problem and ask that they contribute to its solution by mutual self imposition of reasonable restrictions on the pre-trial publication of such details of the events surrounding crimes which can reasonably be expected to impair the right of trial by an impartial jury. By so doing the press would gain the greater respect of the public and would add immeasurably to its already great contributions to preservation of the rights and privileges of a free society under constitutional law.

"We point out here that this discussion is in no wise related to publication of news related to the administration of justice generally, to the courts or to its officers in the performance of their duty, but pertains only to pre-trial publication of events pertaining to specific crimes as it affects the right of an accused to trial by an impartial jury.

"Irrespective of whether the press determines to limit the scope of its pre-trial publication of such events there are other avenues through which the problem must be attacked.

"Prosecuting officials, being lawyers, are strictly prohibited by Rule 15, Sec. 20, Code of Ethics Governing Attorneys, 31 F. S. A., from making for publication statements which pertain to pending or anticipated litigation for the reason that such statements may interfere with a fair trial. All prosecutors must observe this canon and the courts must enforce its observation. That there was no violation of this canon in the case now before us must be made clear.

"Law enforcement officials likewise must be required to abstain from making pre-trial statements regarding the details of crimes under investigation by them, which statements tend to establish the guilt or innocence of one accused of the crime. There is nothing to prevent announcement of the commission of a crime or of an arrest of one suspected of committing it, but they should not publish matters relating to evidence which they have acquired, statements attributed to witnesses, or statements or confessions attributed to an accused. Publication of such statements, evidence or confession forms the basis for trial by newspaper. Further, such statements, evidence or confession either may not be submitted at the trial, or if offered may not be admitted, yet if those who sit on the jury have read the press version of them it is most difficult, if not impossible, for the human mind not to fill in from its extrajudicial knowledge that which is not offered at the trial or to determine the veracity of a witness by comparing the newspaper version of the facts with the testimony given at the trial. It is a tribute to the press that most believe as true what is written or spoken by the press media, yet it must be admitted that press reports are not always accurate and are seldom complete. Further, the accused has no means to answer them, nor is there any appeal from conviction on trial by newspaper.

"If under existing rules and statutes the courts do not have the authority to prevent law enforcement of

ficials from making such statements for publication, the legislature should either impose the limitation itself or authorize the courts to do so. Yet it would be far better if such officials would, out of a sense of American love of justice and fair play born of a recognition that publication of such matters is harmful to the rights of an accused, impose upon themselves a restriction against the making of such statements for publication.

" . . . the general private right of silence (has been) enjoyed in this State by all persons . . . from time immemorial . . . Liberty of speech and of writing is secured by the Constitution, and incident thereto is the correlative liberty of silence, not less important nor less sacred."

Wallace vs. *Georgia Carolina & Northern Railway Co.*, 94 Ga. 732 (1).

"The constitutional right of freedom of speech or of the press was not intended as a refuge for the contemner or slanderer or libeler. Contempt of the court, slander, and libel constitute *abuses* of the privilege, for the commission of which the offenders are justly and lawfully punishable."

In Re Fite, 11 App. 665 (6).

" . . . liberty of the press is subordinate to the independence of the judiciary and the proper administration of justice. Liberty of the press must not be confounded with license or abuse of that liberty."

12 Amer. Jur. 413, Sec. 32, cited in *McGill* vs. *State of Ga.*, 209 Ga. 500, 503.

"A court has the inherent power, in the absence of a limitation placed upon it by the power which created it, to punish as a contempt the publication of any article, with reference to a pending cause, which is cal-

culated to prejudice the jury as to its merits or to obstruct the court in the discharge of its duties."

7 Amer. & Eng. Enc. of Law (2d Ed.), page 60, Note 3.

Thus in 1949 in the Divisional Court of the King's Bench, Daily Mirror Newspapers, Limited, and its Editor, Mr. Silvester Bolam, were adjudged guilty of contempt in respect of publications in advance of the trial of John George Haigh (the so-called Bluebeard) who was in custody for murder, which tended to subject the prisoner to "trial by Newspaper", the newspaper being fined 10,000 pounds and the Editor committed for three calendar months. See this and other cases collected in 94 Law. Ed. at 567.

Wynn vs. *City & Suburban Railway*, 91 Ga. 344, 346 (1):

"1. With wise regard for the rights of the people, the framers of our constitution provided that the law should ever be passed to curtail or restrain the liberty of the press, and guaranteed that every person might publish his sentiments on all subjects, being responsible, however, for the abuse of that liberty. It is, therefore, proper and becoming that the courts and all others should recognize the constitutional right of newspapers to deal with all matters of public interest, and it is equally proper and becoming that newspapers should confine themselves within the limits prescribed by the constitution, and not abuse the liberty given them by that instrument by interfering in any manner with the business of the courts. A newspaper may at any time, with perfect propriety, fairly and truly report all proceedings which have already taken place in the courts of the country, but no newspaper has a right, while a case is under investigation, to comment upon its merits or to express in its columns any opinions as to questions of fact involved; and this is especially true when what is published will most probably

> fall under eye of jurors actually engaged in trying the case, and who may be more or less affected or influenced by the publication. . . . Hence it is that no attorney, party, officer of court, or any other person, is allowed to communicate with a juror about a pending case while he is charged with the consideration and determination of it. Newspapers have no more right to interfere in matters of this sort than any other person, and it is of the utmost importance that they should refrain from so doing. Whenever a newspaper, whether wilfully or otherwise, violates this plain and manifest rule of propriety, and the fact comes to the knowledge of the presiding judge, it is not only his right, but his duty, to call the attention of the jury thereto, express his unqualified disapprobation of such conduct, and caution the jury not to be influenced by the publication in question. Nor is there any error in informing the jury of his intention to summarily deal with the persons who have thus placed themselves in contempt of the court."

Every activity of a publishing corporation is not within the constitutionally protected "freedom of the press." Other activities are not in a privileged position because the actor is a publisher. Cf. *Giragi* vs. *Moore*, 301 U. S. 670, 81 Law. Ed. 1334, 110 A. L. R. 314; *Associated Press* vs. *National Labor Relations Board*, 301 U. S. 103, 132, 81 Law. Ed. 953; *Associated Press* vs. *United States*, 326 U. S. 1, 7, 89 Law. Ed. 2013, 2023; *Breard* vs. *Alexandria*, 341 U. S. 622, 637, 95 Law. Ed. 1233, 1245.

> "A publisher of a newspaper has the same rights, no more or less, than individuals, to speak, write or publish his views and sentiments, and is subject to the same restrictions."
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> *Curry* vs. *Journal Pub. Co.*, 41 N. M. 318, 65 Pac. (2d) 168, 175;
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> *Hysko* vs. *Polonia Pub. Co.*, 239 Mich. 676, 215 N. W. 3;

Van Lonkhuyzen vs. *Daily News Co.*, 203 Mich. 570, 170 N. W. 93 (8);

Bee Pub. Co. vs. *Shields*, 68 Neb. 750, 94 N. W. 1029;

Commercial Pub. Co. vs. *Smith*, 149 Fed. 704.

Newspapers have no special "immunities." *Commercial Pub. Co.* vs. *Boston Transcript Co.*, 249 Mass. 477, 484, 144 N. E. 400, 35 A. L. R. 1.

"The newspaper business is an ordinary business. It is a business essentially private in nature—as private as that of the baker, grocer or milkman, all of whom perform a service in which, to a greater or less extent, the communities depend, but which bears no such relation to the public as to warrant its inclusion in the category of businesses charged with the public use."

Shuck vs. *Carroll Daily Herald*, 215 Iowa 1276, 247 N. W. 813, 87 A. L. R. 975.

See also, *Mack* vs. *Costello*, 32 S. D. 511, 515, 143 N. W. 950, Annotated Cases 1916A, 384.

In the leading case of *Pavesich* vs. *New England Life Ins. Co., et al.*, 122 Ga. 190, in which the opinion was prepared for the Supreme Court by Associate Justice Andrew J. Cobb, Headnotes 2, 3, 4, 5, 6, 7, 8, 11 and 12 are as follows:

"2. A right of privacy is derived from natural law, recognized by municipal law, and its existence can be inferred from expressions used by commentators and writers on the law as well as by judges in decided cases.

"3. The right of privacy is embraced within the absolute rights of personal security and personal liberty.

"4. Personal security includes the right to exist and the right to the enjoyment of life while existing, and is invaded not only by a deprivation of life, but also by a deprivation of those things which are necessary to

the enjoyment of life according to the nature, temperament, and lawful desires of the individual.

"5. Personal liberty includes not only freedom from physical restraint, but also the right 'to be let alone,' to determine one's mode of life, whether it shall be a life of publicity or of privacy, and to order one's life and manage one's affairs in a manner that may be most agreeable to him, so long as he does not violate the rights of others or of the public.

"6. Liberty of speech and of the press, when exercised within the bounds of the constitutional guaranties, are limitations upon the exercise of the right of privacy.

"7. The constitution declares that the liberty of speech and of the press must not be abused; and the law will not permit the right of privacy to be asserted in such a way as to curtail or restrain such liberties. The one may be used to keep the other within lawful bounds, but neither can be lawfully used to destroy the other.

"8. The right of privacy may be waived either expressly or by implication, except as to those matters which law or public policy demands shall be kept private; but a waiver authorizes an invasion of the right only to such an extent as is necessarily to be inferred from the purpose for which the waiver is made. A waiver for one purpose and in favor of one person or class does not authorize an invasion for all purposes or by all persons and classes.

* * * * *

"11. The publication of a picture of a person, without his consent, as a part of an advertisement, for the purpose of exploiting the publisher's business, is a violation of the right of privacy of the person whose picture is reproduced, and entitles him to recover without proof of special damage.

"12. The publication of one's picture, without his consent, for such a purpose is in no sense an exercise of the liberty of speech or of the press, within the meaning of those terms as used in the constitution."

Eavesdropping was a penal offense at the common law. *Rhodes* vs. *Graham*, 238 Ky. 225, 37 S. W. (2d) 46. It is an offense in this State by statute. *Code, Section 26-2002*, last clause.

In *McDaniel* vs. *Atlanta Coca-Cola Bottling Co.*, 60 App. 92, it was held that plaintiff's right of privacy was violated when defendant, thinking plaintiff was going to file an unjustified law suit against it, caused a receiving set to be placed in her hospital room and recorded her sayings and those of her family and other visitors.

"1. The right of the people to be secure in their persons, houses, papers, and effects includes the right of privacy, and is a natural right guaranteed by the Constitution and laws of this State. Where such right is wilfully and intentionally violated with resulting damage to the plaintiff, a cause of action accrues."

Walker vs. *Whittle*, 83 App. 445, and citations.

"The right of privacy, including a right of an individual to be let alone and to keep secret his private communications, conversations and affairs, is a right the unwarranted invasion or violation of which gives rise to a common-law right of action for damages."

Roach vs. *Harper* (Supreme Court of Appeals of West Va.), 105 S. E. (2d) 564.

In *Waters* vs. *Fleetwood, et al.*, 212 Ga. 161, the action was brought by the mother of a fourteen-year-old girl who had been murdered to restrain the sale of photographs of her dead daughter, taken immediately after the removal of the body from the Etowah River, from which it had been recovered after the slaying. The photographs had been

published in the newspaper owned by the defendant publishing corporation and thereafter copies of the photographs were placed on sale by the newspaper. The Court in part said at *page 167*:

> "While it is not the publication of photographs in a newspaper which is complained of in the present action, but the sale of copies of the same photographs which appeared in the newspaper in connection with the news story, the same rule must apply as would apply to the publication of the photographs in the paper. We might point out, in this connection, that from an observation of the pictures attached to the record, it appears that a person viewing them could not identify the deceased. Both photographs were taken from the rear of the body, and no facial features are visible."

In that case the majority of the Supreme Court held that the mother did not have a cause of action for injunction. Chief Justice Duckworth and Justice Wyatt dissented.

In *Bazemore* vs. *Savannah Hospital*, 171 Ga. 257, the defendant newspaper published a picture of plaintiffs' child which had been born with its heart on the outside of its body and which died after having been operated on in defendant's hospital. The hospital had allowed or permitted the defendant photographer to photograph the child in a nude condition and gave to or acquainted the newspaper with the extrinsic facts. The Court held that the petition set out a cause of action for injunction and for general and special damages. Presiding Justice Beck and Justice Hill dissented upon the ground that the child had a cause of action, but it died with the child.

In *Munden* vs. *Harris*, 153 Mo. App. 652, 134 S. W. 1076, the action was in two counts, one for damages for disturbing plaintiff's privacy by publishing his picture without his consent, and the other for libel in publishing the picture along with false statements attributed to plaintiff. The Court held that the action was good upon both counts, and

in respect of the count based upon violation of plaintiff's right of privacy, said in part:

> "The upshot of defendants' position in support of their demurrer to the first count is that there is no right of privacy of which the law will take notice; or, stated differently, their argument is that the law does not afford redress for an invasion by one person of another's privacy, unless it is accompanied by some injury to his property or interference therewith, and that the mere printing and publishing one's picture does not and cannot affect his property . . .
>
> "Property is not necessarily a taxable thing any more than it is always a tangible thing. It may consist of things incorporeal, and things incorporeal may consist of rights common in every man. One is not compelled to show that he used, or intended to use, any right which he has, in order to determine whether it is a valuable right of which he cannot be deprived, and in which the law will protect him. The privilege and capacity to exercise a right, though unexercised, is a thing of value—is property—of which one cannot be despoiled. If a man has a right to his own image as made to appear by his picture, it cannot be appropriated by another against his consent. It must strike the most obtuse that a claim of exclusive right to one's picture is a just claim. . . .
>
> "We therefore conclude that one has an exclusive right to his picture, on the score of its being a property right of material profit. We also consider it to be a property right of value, in that it is one of the modes of securing to a person the enjoyment of life, and the exercise of liberty, and that novelty of the claim is no objection to relief. . .
>
> "It ought, however, to be added that though a picture is property, its owner, of course, may consent to its being used by others. This consent may be express, or it may be shown by acts which would be inconsistent with the claim of exclusive use, as if one should become

> a man engaged in public affairs, or who, by a course of conduct, has excited public interest. . . . But the difference between that right and a claim to take another's picture against his consent, or to make merchandise of it, or to exhibit it, is too wide for hesitation in condemning the act and granting proper relief. The foregoing views find ample support in thoroughly considered cases decided in recent years."

Leading the authorities cited is the decision of the Supreme Court of Georgia in the *Pavesich case, supra.*

In *Ex Parte Sturm, et al.*, 136 Atl. 312, the Judge of the Criminal Court of Baltimore City, ascertaining that the prisoner's photograph had been taken in the "lockup" in the courthouse, directed that the photographer, who had been brought before him, surrender the photographic plate. The photographer handed over a blank plate, and the photograph of the prisoner was subsequently published. Upon the opening of the court that morning the Judge made an order against the taking of any photographs for moving pictures or the press or any other agency in the courtroom or the precincts of the court. During the course of that day's proceedings a newspaper photographer, by direct instructions of the City Editor, took seven pictures in the courtroom, using a small camera while seated at the table provided for the press, the camera being used secretly and so that the trial Judge was not aware that his order was being violated. Two of these photographs were published in the newspaper. The responsible parties were convicted in respect of the photograph taken in the lockup, those taken in the courtroom, and the publication of such photographs. In affirming these convictions, the Court of Appeals of Maryland said in part:

> "The fundamental question in the case is whether the trial judge had competent authority to forbid the removal of the picture of (the prisoner) taken at the entrance to the lockup before any order against the taking of pictures had been announced, and to prohibit

the use of cameras in the courtroom during the progress of the trial. For the purposes of the present inquiry it is not necessary to consider whether, in the absence of inhibition of the court, the acts of the photographers and the editors in securing and publishing the pictures in question would make them legally subject to prosecution for contempt. It was for the deliberate violation of the court's mandates that the charges of contempt were preferred. The effort of the court was to prohibit the taking of pictures in or near the courtroom with a view to their publication. It was not merely to preserve the dignity and decorum of the tribunal, but to protect the prisoner and other participants from an unnecessary and perhaps objectionable degree of publicity, that the preventive measures were adopted. There is consequently no reason to restrict the application of the court's order to the mere act of taking photographs when the purpose to prevent the publication of pictures procured in that manner was unmistakable.

"If it was within the proper scope of the trial court's authority to protect the prisoner from photographic exploitation, and the sessions of the court from possibly disquieting activities, by the orders which have been challenged, then it is clear that they could not be violated with impunity. . . .

"As to the existence of requisite power in the court below to accomplish the purposes to which its action in this case was directed we can have no doubt. . . .

". . . The ordeal of his approaching trial was one to which he was required to submit. But it was not essential that his humiliation should be intensified by his compulsory submission to a photographic portrayal, for publicity purposes, of his appearance as he was brought within the precincts of the court to stand trial for his life. As he was then under the court's control, it was natural and just that the court should have a sense of responsibility for his protection against unauthorized invasions of his personal rights. If he had

not been in custody, he might have defended himself against the photographer's objectionable act. It was entirely justifiable for the court to intervene under the circumstances in order to guard him against the special publicity to which he was about to be subjected. The liberty of the press does not include the privilege of taking advantage of the incarceration of a person accused of crime to photograph his face and figure against his will. As the Supreme Court of Georgia said in Pavesich vs. New England Life Ins. Co. . . . 'The constitutional right to speak and print does not necessarily carry with it the right to reproduce the form and features of an individual.'

"The interference of the court was with an act which was committed in the courthouse so near to the time and place of trial that the noise of the photographic flash was audible to the judge who was about to open the session at which the prisoner was to be arraigned. If the photographer of the Baltimore News was to be permitted to succeed in his effort to obtain (the prisoner's) picture for publication, a similar privilege could not be fairly denied to photographers of other newspapers. The confusion possibly incident to the general exercise of such a privilege in close proximity to the court, as well as its rightful concern that the prisoner under its control should receive proper treatment, were considerations amply supporting its authority to prevent the consummation of the photographer's design. . . .

"The deceit practiced upon Judge O'Dunne, for the purpose and with the result of obstructing the performance of a legitimate function of his office, was a very flagrant form of misbehavior. . . .

"The challenge in this case of the court's right to forbid the use of cameras in the courtroom during the progress of the trial presents an issue of vital importance. If such a right should yield to an asserted privilege of the press, the authority and dignity of the courts would be seriously impaired. It is essential

to the integrity and independence of judicial tribunals that they shall have the power to enforce their own judgment as to what conduct is incompatible with the proper and orderly course of their procedure. If their discretion should be subordinated to that of a newspaper manager in regard to the use of photographic instruments in the courtroom, it would be difficult to limit the further reduction to which the authority of the courts would be exposed. It would be utterly inconsistent with the position and prerogatives of the judiciary, as a coordinate branch of government, to require its submission to the judgment of a nongovernmental agency as to a question of proper conduct in the judicial forums.

"The argument for the appellants concedes that a judge may regulate, as to time, manner, and number, the taking of photographs in the courtroom, but it is contended that the bounds of his discretion are passed when he substitutes prohibition for regulation. The basic theory of the contention is that representatives of the press have a right to attend and report trials of persons accused of crime, which are public proceedings, and that photographic portrayals of the trial scenes, if obtained without disturbance, are as legally permissible as verbal descriptions. This theory assumes the right of the persons desiring to procure and publish such pictures to enforce their own views, in opposition to those of the court, as to whether the use of cameras in the courtroom, to photograph the participants in the trial, during its progress, is consonant with a proper and customary standard of decorum and with the concern and responsibility which the court should feel for the protection of the normal sensibilities of the persons to be affected by such a form of publicity. The constitutional right of the accused to a public trial is a privilege intended for his benefit. It does not entitle the press or the public to take advantage of his involuntary exposure at the bar of justice to employ photo-

graphic means of picturing his plight in the toils of the law.

"The ability of a photographer to take a picture in court without noise or distraction and without the knowledge of the judge is not a reason why he should be at liberty to ignore a positive judicial order forbidding the use of cameras at the trial . . .

"The privileges of the press under the law deserve the appreciative consideration of the judiciary. There are occasions when the vindication of those privileges depends upon judicial action. The high importance of the press as an agency of modern civilization is nowhere more freely recognized than in courts of justice. . . .

"But the duty and disposition of a court to accord a justly ample scope to the liberty of the press should not be carried to the point of an undue abridgment of the court's own freedom. There are proper spheres within which the courts and the press may operate without any conflict of interest or purpose. In this case the liberty of the press has been invoked in support of acts which were an invasion of the domain within which the authority of the courts is exclusive. A due regard for the integrity of the judicial power forbids, and the legitimate interests of the press do not require, that such an encroachment should be sanctioned. . . .

"As the contempts in the present cases were violations of orders which, in our opinion, were clearly within the legitimate scope of the court's authority, we have not discussed, and do not decide, the question whether a conviction in a contempt proceeding beyond the proper limits of judicial power would be subject to appellate review."

In *Brumfield* vs. *State of Florida* and *Silver* vs. *State of Florida*, decided December 10, 1958, the Supreme Court of Florida reviewed an adjudication of contempt for violation

of an order of the Circuit Court of Dade County prohibiting the photographing of a certain prisoner "in the jail preceding his arraignment, or on his way to or from the court session . . . or in the courtroom." The order stated in part:

> "It is ordered that no photographs or pictures shall be taken during the proceedings before me in this case in the courtroom or at any place within thirty feet of any entrance to the courtroom; and that the accused shall not be photographed in the jail preceding his arraignment, or on his way to or from the court session during which he is to be arraigned, or in the courtroom."

Silver was convicted for obtaining motion pictures of the prisoner on the nineteenth floor of the courthouse as he was brought from the elevator leading to the detention quarters above. Brumfield was convicted for taking television photographs of the prisoner from the place where he had stationed himself a short distance from the entrance of the courtroom in which the arraignment proceedings were to be held. The films were not actually used or broadcast. During the course of the opinion affirming the convictions the Supreme Court said:

> "At the hearing below and upon this appeal appellants attack the validity of the original order of the court. Specifically they raise questions of freedom of the press under the First and Fourteenth Amendments of the Constitution of the United States and under Sections 1 and 13 of the Declaration of Rights of the Constitution of Florida. Their major contention appears to be that the court's injunctive power in this connection should be restricted to the prevention of acts or conduct which constitute physical disturbances of courtroom decorum. . . .
>
> "While the record evidence is probably adequate to demonstrate that the photographic techniques used by appellants were not such as to cause inordinate dis-

turbance or indignities by distracting lights or sound, the point is not determinative of the issue at hand. . . . The only 'freedom' restrained is one shared by press and public alike: an alleged right of full and complete access to participants in events of public interest or newsworthiness. A recent federal court decision, dealing with the same asserted privilege of photographing parties to judicial proceedings beyond the court confines, recognizes this clear distinction: 'Realizing that we are not dealing with freedom of expression at all but with rules having to do with gaining access to information on matters of public interest, can it be argued that here there is some constitutional right for everybody not to be interfered with in finding out things about (or making photographic reproductions of) everybody else?' . . .

"There has not been shown to exist any compulsion upon a court or any other governmental agency to make available for public consumption all aspects of each step of every proceeding conducted under its authority. In the case of the judiciary, historical experience, culminating in our constitutional guarantees, showed only the necessity for 'public trial.' This requirement, even if it should be deemed to include the preliminary steps involved in the situation at bar and even if a ban on photography by public and press alike is considered to be a restriction on the public nature of the proceedings, has always been subject to limitation. . . .

". . . The purpose of such restrictions (stated by the Court) is manifestly not confined to prevention of physical disturbance, and the power to limit public information or exclude spectators would certainly include the power to limit the vicarious audience by prohibiting photography. . . .

"It is generally conceded that under certain circumstances the public and press alike might be denied permission to interview or otherwise make personal

contact with a prisoner awaiting trial. Certainly he might be brought to the courtroom, for arraignment, by a route other than the public corridor if physical facilities were available. If constitutional inhibitions do not prevent that procedure, can they operate to prevent a court's accomplishing the same end by injunctive order if circumstances dictate such precautions? We think not. . . .

"That such extensive publicity can adversely affect the rights of a defendant to a fair trial is no longer debatable. In reversing a conviction resulting from a trial accompanied by press activity in its wildest form, . . . a United States Supreme Court Justice concluded that 'prejudicial influences outside the courtroom, becoming all too typical of a highly publicized trial, were brought to bear on this jury with such force that the conclusion is inescapable that these defendants were prejudged as guilty and the trial was but a legal gesture to register a verdict already dictated by the press and the public opinion which is generated.' . . .

"Since the order must be sustained on the foregoing ground, it is not necessary to determine whether the court's efforts to prevent photographic exploitation of the case or the prisoner's person could lawfully have been grounded upon the preservation of his personal right of privacy. Substantial, and, we think, the best, authority supports such a measure, on the theory that a 'public figure' relinquishes privacy only to the extent necessary to satisfy legitimate public interest in the public event or events in which he may be involved. It is difficult to see, in the instant case, any necessity or reason for gratification of a desire to witness the accused's visage at this point in the proceedings against him, and because of the essentially helpless position of one in legal detention, judicial restraint of possible tortious conduct against him would logically be warranted in spite of the general rule against injunctive relief to prevent commission of a tort.

"There is little justification for a running fight between the courts and the press on this question of a fair trial and a free press. Both are basic and sacred concepts in our system of government. Both are in one Constitution and govern one nation of millions of individuals. All that is required to preserve both is for the press and the courts to place the emphasis on the Constitution instead of themselves."

The Federal Court decision quoted from above by the Supreme Court of Florida is *Tribune Review Publishing Co.* vs. *Thomas*, 254 Fed. (2d) 883, in which the opinion of the Third Circuit Court of Appeals was written by Judge Goodrich, who will be recalled as delivering a scholarly address on the subject of The Judiciary before the Atlanta Lawyers' Club several years ago. Attack there was made upon the validity of rules of The Court of Common Pleas of Westmoreland County, Pennsylvania. These rules are:

"(a) No pictures or photographs shall be taken, immediately preceding or during sessions of this court or recesses between sessions, in any of the court rooms or at any place in the court house within forty feet of the entrance to any court room.

"(b) No court proceeding shall be broadcast or televised.

"(c) No pictures or photographs of any party to a civil or criminal action, juror or witness, shall be taken in the Law Library or in any office or other room of the court house, except with the knowledge and consent of the person or persons photographed.

"(d) No prisoner or inmate of the county jail shall be photographed in the jail or on his way to or from a session of court."

The Court said in part:

"The plaintiffs attack the rule as a violation of freedom of speech and press enumerated in the first amend-

ment of the Constitution of the United States and protected against state action by the fourteenth amendment....

"The various cases cited by the appellants for free speech all have to do with expression of thought in some form. Over and over again the Court, especially through Mr. Chief Justice Hughes, has pointed out that the struggle for freedom of the press 'was primarily directed against the power of the licensor.'...

"The big jump which the plaintiffs' case takes is from this completely solid foundation regarding freedom of utterance to a super-structure supported by assertion only. They say that since the right to publish photographs of newsworthy subjects is within the ambit of constitutional protection 'the right to take such photographs inexorably follows.' They do not press the point so inexorably, however, as the unqualified statement would indicate. They grant that a court may prohibit the taking of photographs in the court room. Evidently they do not wish to challenge rule 53 of the Federal Rules of Criminal Procedure, 18 U. S. C. A. Nor Canon 35, Canons of Judicial Ethics of the American Bar Association. Nor do they deny outright the statement of the district court that the press here has no more right than any other member of the public although they do say that the district judge made more of this than he should have. Judge Fuld speaking for the majority in United Press Association v. Valente, 1954, 308 N. Y. 71, 123 N. E. 2d. 777, 778, said of the right of free speech, 'That right has, . . . never been held to confer upon the press a constitutionally protected right of access to sources of information not available to others.'

"Realizing that we are not dealing with the freedom of expression at all but with rules having to do with gaining access to information on matters of public interest, can it be argued that here there is some constitutional right for everybody not to be interfered

with in finding out things about everybody else! We suppose it would not be contended that a newspaper reporter or any other citizen could insist upon entering another's land without permission to find out something he wanted to know. In the same way merely because someone's private letters might be interesting as gossip or as models of English composition it would hardly be argued that one could open another's desk and read through what he finds there. Could an interested observer insist on the constitutional right to take motion pictures of a private family in and about its household contrary to that family's wishes! We think that this question of getting at what one wants to know, either to inform the public or to satisfy one's individual curiosity is a far cry from the type of freedom of expression, comment, criticism so fully protected by the first and fourteenth amendments of the Constitution.

"If a judge may, for the purpose of maintaining order and decorum, control the taking of pictures in his own court room it can hardly be successfully argued that his power stops when one closes the court room door. . . .

"There is existing authority under Pennsylvania law to make the rules here involved, and there being no interference with any constitutional right to freedom of speech or the press, the judgment of the district court will be affirmed."

The opinion of the United States District Court upholding the Westmoreland County rules is found at 153 Fed. Supp. 486. The decision of the Supreme Court of Pennsylvania affirming convictions for violation of these rules is at 386 Penn. 251, 126 Atl. (2d) 679, 681. In the course of its opinion the Supreme Court said:

". . : whether or not freedom of the press is here involved is immaterial, since such freedom is subject

to reasonable rules seeking maintenance of the court's dignity and the orderly administration of justice.

"The defendants repeatedly assert that they do not contend for the right to take pictures within the court room, even by the infra red ray method which is accompanied by no display or disorder. But it must be conceded that if we sustain their contention that this rule of court infringes upon their rights of freedom of the press, the court likewise would have no power to forbid the taking of pictures in the court room which were accompanied by no disorder or disturbance."

Use of Public Streets and Sidewalks for Private Business Purposes.

"The use of streets and highways is not absolute and unrestricted, but is subject to reasonable regulation.

"Individuals do not have the inherent right to conduct their private businesses in the streets of a city, and the State or city can prohibit the owners or operators of jitneys and buses from transporting passengers for hire in such vehicles upon the streets of a city.

"The transportation of passengers for hire in such vehicles or otherwise is a privilege which the State or the municipality can give or withhold.

"The due-process and equal-protection clauses of the Federal and State constitutions protect rights alone, and have no reference to mere concessions or mere privileges which may be bestowed or withheld by the State or municipality at will. Discrimination in the grant of favors is not a denial of the equal protection of the law to those not favored."

Schlesinger, et al. vs. *City of Atlanta,* 161 Ga. 148, Headnotes 1, 2, 2(a) and 2(b).

"A highway is a way open to all the people."

Southern Railway Co. vs. *Combs,* 124 Ga. 1004.

"A highway is a public way open and free to any one who has occasion to pass along it on foot or with any kind of vehicle."

Atlanta West Point R. R. Co. vs. *Atlanta Birmingham & Atlantic R. R. Co.*, 125 Ga. 529, 545.

"A street is a highway in a city or town used by the public for the purpose of travel, either by means of vehicles or on foot." Id.

". . . streets and public places belong to the general as well as the local public."

Simon vs. *City of Atlanta*, 67 Ga. 618, 621.

In *Schlesinger, et al.* vs. *City of Atlanta*, supra, the Supreme Court said:

". . . The primary purpose of streets is for passage and travel, and they are primarily intended for the use of travelers. (Cits.) Streets and highways are not intended to furnish places of business to individual members of the public. An individual can not maintain a place of business on a public road, and a permanent structure thereon for such purposes, which materially interferes with travel thereon, is a nuisance per se, which a court of equity will enjoin." (Page 160)

"The streets of a city belong to the public and are primarily for the use of the public in the ordinary way. The ordinary use of the streets, as we have seen above, is for travel. . . ." (Page 161)

"Streets are primarily intended for the use of travelers; and a municipal corporation has no power, in the absence of express legislative authority, to allow a street to be used for any other purpose. Political Code, Sec. 745. Any permanent structure in a street which materially interferes with travel thereon is a public nuisance. Permanent structures which do not inter-

fere with travel and which are erected for public purposes, such as telegraph and telephone poles, and the like, are permissible. . . . Temporary obstructions in a street are permissible under certain circumstances, even where the obstruction is for the benefit or convenience of an individual. . . . A householder may temporarily obstruct a street in moving his effects out of or into his house. It is impossible to enumerate all the cases in which the temporary obstruction of a street may be allowed; but the general rule is that if the purpose for which the obstruction is created is lawful, and the obstruction exists only for such a time as is reasonably necessary to accomplish the purpose which brings about the necessity for the obstruction, such an obstruction would not be a public nuisance. What would be a reasonable time is to be determined according to the circumstances of each case. . . . Any temporary obstruction in a public street is presumptively a public nuisance, and it is incumbent upon the persons responsible for the presence of such obstruction to show that it was placed in the street in furtherance of a lawful and legitimate purpose, and has not been continued any longer than was reasonably necessary for the accomplishment of this purpose. Persons who have places of business or residences upon lots abutting upon the street may temporarily obstruct the street under those circumstances where it is necessary to completely enjoy the rights and privileges incident to ownership of property so situated."

City Council of Augusta vs. *Reynolds*, 122 Ga. 754.

See,

Laing vs. *Mayor and Council of Americus*, 86 Ga. 756;

Marietta Chair Co. vs. *Henderson*, 121 Ga. 399;

Harbuck vs. *Richland Box Co., et al.*, 204 Ga. 353.

Authority and Responsibility of Each Court to Make Rules for the Transaction of Its Business

In *Chapman* vs. *Gray*, 8 Ga. 337, the Supreme Court held:

"(3) The rules of the Court are the law of the Court, until repealed, unless they are repugnant to the Constitution and Statutes of the State. . . .

"The position assumed in the argument is, that the rule itself is useless, and it is sought, for this reason, to screen the party from the consequences of his neglect. This Court cannot, and will not entertain such an argument, or sustain such an excuse. The Legislature has clothed the Judges of the Supreme Court with the discretion of establishing Rules of Practice. (Cit.) This power is inherent in all Courts.

"The rules of this Court are the laws of the Court, and must be obeyed, until repealed. unless it can be shown that they are repugnant to the paramount law; . . . All judicial rules are judicial legislation. But this constitutes no good objection to their validity."

The *Code of Georgia* provides in *Section 24-106*:

"The rules of the respective courts, legally adopted and not in conflict with the Constitution of the United States or of this State, or the laws thereof, are binding and must be observed."

"Rules of the court do not, and can not, suspend the force of statutory law (unless in any statute so provided). Obedience to the law is no less obligatory upon judges than the laity, even though the statute be meant expressly for the benefit of the former and might be disregarded by them with impunity."

Boston Ins. Co. vs. *Harmon*, 66 App. 383, 390.

In Holliman vs. The State, 175 Ga. 232, the question was the validity of an Act of the General Assembly providing that the failure of the Supreme Court to act upon an appli-

cation for the writ of a certiorari within a stated time should have the effect of granting the writ. The Supreme Court held:

"3. The constitution provides for a separate existence, distinct functions, and absolute independence of the three co-ordinate branches of the State government —executive, legislative, and judicial. The attempt of the General Assembly, in the passage of the act referred to, is an invasion of the prerogative of the judiciary, which is not sanctioned by the constitution."

Code, Section 24-104 provides in part:

"Every court has power—

"1. To preserve and enforce order in its immediate presence, and as near thereto as is necessary to prevent interruption, disturbance, or hindrance to its proceedings.

• • • • •

"4. To control, in furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto."

"The 'inherent powers' of a court are such as result from the very nature of its organization and are essential to its existence and protection and to the due administration of justice. It is fundamental that every court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction. . . .

"The difference between the jurisdiction of courts and their inherent powers is too important to be overlooked. In constitutional governments, their jurisdiction is conferred by the provisions of the Constitutions and of statutes enacted in the exercise of legislative authority. That, however, is not true with respect to such powers as are necessary to the orderly and effi-

cient exercise of jurisdiction. Such powers, from both their nature and their ancient exercise, must be regarded as inherent. They do not depend upon express constitutional grant or in any sense upon the legislative will."

14 Amer. Jurisprudence, Sec. 171.

"The proper administration of justice is the main business of a court, and whatever obstructs or embarrasses its chief function must necessarily be under its control."

In Re Integration of Neb. Bar Assn., 275 N. W. 265 (5).

"It is well established that courts have the inherent power to prescribe such rules of practice and rules to regulate their proceedings and facilitate the administration of justice as they may deem necessary."

14 Amer. Jurisprudence, Sec. 151.

"The power of courts to make such rules as they may deem necessary is subject to the limitation that such rules must not contravene a statute or the organic law."

Id., Section 152.

"Finally, a rule of court must be reasonable to be upheld."

Id., Section 152.

"Rules of court adopted for the dispatch of business and the impartial administration of justice must be written. Since, when legally adopted and promulgated, they have the effect of positive laws, they ought not only to be formally promulgated, but they should be definitely stated, published, and made known in some permanent form."

Id., Section 154.

Do Plaintiffs Have Any Greater Right in Respect of Photographing and Sound Recording Persons in the Courthouse Square Than Anyone Else?

Plaintiff Atlanta Newspapers, Inc., is a corporation engaged in the business of newspaper publishing and operating radio and television stations. Plaintiff Marion Johnson is the head photographer for this corporation. Plaintiff Georgia Press Association is a corporation which publishes Editors' Forum, a monthly magazine, and which is interested in the advancement of the interests of the newspaper publishing industry.

Plaintiffs assert they are entitled to the use of the Courthouse Square for the purpose of making photographs and sound recordings under and by virtue of the freedoms of speech and of the press guaranteed in the Constitution of Georgia, and which plaintiffs allege are also guaranteed in the Constitution of the United States.

The liberties of speech and of the press are liberties belonging to the individual, and belonging equally to each and every individual. A newspaper corporation has no greater right to the liberties of speech and of the press than has a person not engaged in such enterprise. A newspaper corporation is accorded through its officers, agents and employees ~~the li'ser~~ties of speech and of the press because these liberties belong to all the people. Neither the Constitution of Georgia nor that of the United States has undertaken to confer upon newspapers or upon newspaper corporations any greater rights than these documents have preserved to every person.

Thus, if these plaintiffs have the right to utilize the Courthouse Square for the purpose of making sound recordings and photographs, and if they have a right to station their employees therein, and record the sayings, and photograph the persons of participants in trials in the Fulton County Courthouse, such right belongs equally to every person, including the jeweler, the grocer, the baker, the merchant, the farmer, the manufacturer, the banker, the candid camera fan, etc. If plaintiff corporations can send

their representatives into the Square for these purposes, so can every other business establishment in the State, and so can every other man, woman and child in the State.

Is There a Constitutional Right to Record the Sayings and Photograph the Persons of Participants in Trials When They Come Into the Courthouse Square?

It is to be noted, that there is no constitutional right in plaintiffs to utilize the public streets and sidewalks comprising the Courthouse Square for their private business affairs. Their right to utilize the Courthouse Square is the same as that of others. The streets and sidewalks are designed for passage and travel. Such use as the authorities may permit plaintiffs to make of the Courthouse Square for their private business is a permissive use in the nature of a privilege and not one which plaintiffs can claim as of constitutional right. See, *City of Brunswick* vs. *Anderson*, supra.

The recording of the sayings of such persons necessarily falls into two categories—(1) interviews with them and (2) listening and recording what they are overheard to say.

An interview in which the person interviewed made no response would be of no utility as such. The fact of refusal to answer would be the subject of narration. Intimately bound up with the assertion of plaintiffs that they have a constitutional right to make sound recordings of interviews, is the question whether the trial participant is required under the Constitutions to answer their questions. If plaintiffs have the asserted constitutional right to record interviews, then they have the constitutional right to require trial participants to answer. This is an extraordinary claim. Police officers having one under lawful arrest are authorized to question him, but the person under arrest is not required to answer. Witnesses in court proceedings are required to answer questions propounded, but here the interrogation is not without limit. The witness has the right to refuse to incriminate himself by his answers, and also

to insist that the questions shall be pertinent. The presiding Judge is present to enforce these rights of the witness. We hold that plaintiffs have no constitutional right to require trial participants to submit to their interrogations and to record the interviews.

As to any asserted right to eavesdrop and record, no authority is cited. There is no provision in any Constitution sustaining it, and we have never read any court decision holding that such a constitutional right exists in favor of the plaintiffs and against the general public or any part of it. Every person has an undoubted property right in his own voice. We hold no constitutional right exists as claimed by plaintiffs.

Plaintiffs assert that the Constitutions of Georgia and of the United States, as a part of the liberties of speech and of the press, give them the right to photograph trial participants as they come to or leave the trials and while in the Courthouse Square. As has been pointed out, if plaintiffs have this right, so does everyone else. Does everyone have the right to photograph everyone else? Here the precise question is, does everyone have the right to photograph trial participants in the Courthouse Square on their way to and from court? This asserted claim of plaintiffs is also extraordinary. It, as does their claim of the right to interrogate and record, and listen and record, strikes at that part of the fundamental and natural rights of men and women denominated by the Supreme Court of Georgia as the right or privacy. Such right in the State of Georgia inheres in the individual as a part of the absolute rights of personal security and personal liberty. The natural right of privacy inheres in the possession by each person of an individuality, identity and personality, separate and apart from every other person in the whole community of men, and it is that which has raised the commonalty of mankind from the dust. The form, face, visage and body of a man or woman belong to that man or woman. A portraiture thereof is likewise the property of the person portrayed. To reproduce mechanically the form, figure, visage and

body of a person is in a very real sense to lay hand upon that person. At the common law to lay hand upon another against his will was a penal offense, and it is now so. By the ancient civil law, as Mr. Justice Cobb points out in the *Pavesich* case, to follow a child or a virtuous woman about the streets was an "outrage" and punishable as a crime. The proposition that one person may photograph another at will shocks the moral sense.

Yet the plaintiffs here claim that a part of the liberties of speech and of the press, embalmed in the Constitutions, and placed there beyond the reach of Legislatures and of Courts, confers upon them the power, privilege and right to photograph and sell the portraiture of trial participants as they enter and leave the Courthouse Square. Surely if the framers of the Constitution of Georgia and the Constitution of the United States had desired to confer upon these plaintiffs such license to trespass upon the ordinary rights of individuals, somewhere a statement thereof could be found.

We quote again the *Constitution of Georgia*:

> "No law shall ever be passed to curtail or restrain the liberty of speech, or of the press; any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

The Constitution of the United States confers no greater liberties of speech and of the press. These words do not confer upon anyone the privilege of photographing another person. We refer again to the language of the U. S. Court of Appeals for the Third Circuit, in *Tribune Review Pub. Co.* vs. *Thomas*, *supra*: "We think that this question of getting at what one wants to know, either to inform the public or to satisfy one's individual curiosity is a far cry from the type of freedom of expression, comment, criticism so fully protected by the first and fourteenth Amendments of the Constitution. . . ."

See again also: *Brumfield* vs. *State of Florida* and *Silver* vs. *State of Florida*, *supra*, and *Ex parte Sturm*, *supra*.

If plaintiffs have any such rights as they claim, it is not in virtue of the Constitution of Georgia or of the Constitution of the United States.

Provisions of the Constitutions Which Are Here Involved.

Because the liberties of speech and of the press do not onfer the right to photograph the persons and sound record the sayings of trial participants in the Courthouse Square, it does not follow that the Constitution of Georgia and that of the United States of America are not here involved.

(1) The right of silence is protected by the Georgia Constitution. The liberty of speech includes the freedom of choosing when to speak, and includes the right not to speak, or the liberty of silence. *Article I, Section I, Paragraph XV* of the Constitution of Georgia protects this right. In Georgia this right is also regarded as a part of the liberty of the citizen which is under the protection of *Article I, Section I, Paragraph XV*.

(2) The right of individual privacy is in this State guaranteed by the above provisions of the Georgia Constitution, and also by *Article I, Section I, Paragraph II*, providing, "Protection to person and property is the paramount duty of government, and shall be impartial and complete"; and the right of the people to be secure in their persons, as provided by *Article I, Section I, Paragraph XVI*.

(3) The right of access to the courts, the right of a fair trial, the right to the due process of the law, the right to jury trial in cases at law, are all constitutional rights in Georgia. *Article I, Section I, Paragraphs II, III, IV, V*. All persons have a right to apply to the courts of justice. All persons litigate therein, whether as plaintiff or defendant on the civil side of the court, or prosecutor or accused on the criminal side of the court, are entitled as of right to a hearing of the cause on the sworn evidence; on evidence

adduced from witnesses attentive to their oaths and free from outside influence; in jury cases by jurors free from outside influence; and by a tribunal conducted in such manner as to proceed undisturbed to deliberate consideration of the case in hand upon the basis only of the law and the evidence.

(4) The general public, all the people of the State, as well as those having business before the Court, are entitled as of right to demand that the courts of justice function independently as provided under *Article I, Section I, Paragraph XXII*. Of the Superior Courts, they are entitled to demand as of right the independent exercise of the powers committed to those courts by *Article VI, Section IV*.

(5) To some extent some of the above rights and liberties are governed also by the Fourteenth Article of Amendment of the United States Constitution. It is unnecessary to explore this subject, as the Constitution of Georgia affords more adequate protection.

The Right of Privacy of Persons Attending Court.

Witnesses and jurors attend under the compulsion of subpoena and summons. The plaintiff in a civil action attends under the compulsion of necessity because the court is the one place established by law to which he may apply for the vindication of his rights. The defendant in a civil action attends under the compulsion of necessity because if he does not so attend his side of the case will not be heard and if the issue is decided against him his property may be seized, and in some instances his person taken into custody. Infants and others under legal disability, whose custody or property is in dispute, attend under the compulsion of the positive or inchoate order of the court so requiring. In a criminal proceeding the defendant, if in custody, is physically brought into the court and thus compelled to attend on his trial. If at liberty under bail, he attends under the sanction whereby if he absents himself

his bail will be forfeited and his person seized. Prosecutors in criminal proceedings are usually witnesses; they are also in a sense parties, for if the jury should find the prosecution was malicious the prosecutor may be imprisoned until the costs are paid.

The question is, whether such participants in trials before the court, who are present under compulsion, by their attendance on the trial, lose the right of privacy to the extent that recordings may be made of their sayings and their persons photographed at will in the Courthouse Square.

As the Supreme Court held in the *Pavesich* case, the right of the individual to privacy is limited by the liberties of speech and of the press when these liberties are exercised within the bounds of the constitutional guaranties; and the liberties of speech and of the press may not be lawfully used to destroy the right and liberty of individual privacy. It follows that when, pursuant to the liberties of speech and of the press, a fair, correct and truthful report is published of a trial proceeding, the name and identity of the witness may be stated in connection with his testimony, and such publication of the identity of the witness is not a violation of his right of privacy. The right which the witness possessed in the first instance not to be talked about or written about, yields in this instance to the liberties of speech and of the press.

An entirely different situation is presented with reference to the recording of the voice and utterances, and the portraiture of the person of a witness, in the Courthouse Square. We have seen that the liberties of speech and of the press confer no rights, powers and prerogatives over the person in these respects. The question whether in these regards the witness has lost his right of silence and his liberty of privacy, depends simply upon whether he has waived these rights; or to put it differently, upon whether he consents to have his voice and utterances mechanically recorded and a photograph made of his person. This consent may be express or implied. As the *Pavesich* case puts

it: "*A waiver authorizes an invasion of the right only to such an extent as is necessarily to be inferred from the purpose for which the waiver is made.* A waiver for one purpose and in favor of one person or class does not authorize an invasion for all purposes or by all persons and classes."

A man or woman testifying as a witness in court presents his or her person necessarily before the gaze of the court, the jury, the parties, the court officers and other persons in the courtroom. The witness does this under compulsion of the law. By doing so, the witness does not consent, either expressly or impliedly, to put himself or herself on exhibition before the whole public, either in person or by portraiture, or to the display or sale of his picture in any shape, form or fashion. To read such a consent into the fact of the appearance of a witness in court is to ignore actuality.

When a witness testifies in a court of justice the testimony given upon oath is a part of the official proceedings in the case. The words, the language, the testimony of the witness are parts of the record in that case. But the face, the form, the visage, the person of a witness remain his own, and in no way enter the public domain. That in determining the credibility of the witness, the court and jury may consider his demeanor upon the witness stand as he was examined in no way suffices to justify the portraiture of the witness.

If plaintiffs have the right to interrogate and record the sayings of witnesses and the right to photograph witnesses in the Courthouse Square during trials, it follows that such witnesses are under a duty to submit to such interrogation, recording and photography. "For every duty towards some person or persons, it follows that there is someone in whom therefor a correlative right is vested. And conversely every right must be a right against some person or persons, upon whom, therefore, a correlative duty is imposed." *Sir John Salmond, Jurisprudence*, 7th Edition 240.

Suppose the witness refuses to submit? Can he be forced to answer the interrogations? Can he be compelled to pose? Can he be held until his picture is taken? Is it inescapable that if plaintiffs have a right to do as they claim, the witness is under a duty to submit to them. Can the witness be forced to appear on plaintiffs' radio station? Can the witness be compelled to show himself on plaintiffs' television station?

The question here relates to plaintiffs' claim that as of right they may record and photograph participants in trials while they are in the Courthouse Square on their way to and from court. There is no way to reach the court or to leave the court except through the Courthouse Square. Plaintiffs' claim is genuinely one whereby they assert an actual right to compel witnesses and other participants to yield to them. Plaintiffs say, "You are subpoenaed to court and must obey, but we station ourselves at the only entrance and exit so that in order to obey the subpoena you are required to submit to our recordings and photography." Note the testimony of plaintiff Marion Johnson: "Q. BY THE COURT: It is more a matter of catching them rather than news worthiness, isn't it? A. Well, it helps to have them coming in one door, yes, sir, it sure does." (R. 99)

It is asserted that plaintiffs have a right to photograph "public events" and publish these photographs as "news". It is asserted that if an automobile wreck occurs on the highway, this is "news", and that plaintiffs have a right to photograph the scene of the wreck, including participants who are present. See, *Gill* vs. *Curtis Pub. Co.*, 239 Pac. (2d) 630; *Gill* vs. *Hearst Pub. Co.*, 239 Pac. (2d) 636; *Leverton* vs. *Curtis Pub. Co.*, 192 Fed. Rep. (2d) 974. Assuming for the sake of argument, that this correctly states the law in Georgia, it does not follow that plaintiffs could force the persons connected with the automobile wreck to remain on the scene for the purpose of being photographed; or that they could prevent them from escaping the scene to avoid being photographed; or that they could compel them to submit to the recordings of interrogations. So likewise it

does not follow that plaintiffs may record and photograph witnesses and others attending court under compulsion on the only entrances and exits to the court. This is indistinguishable from forced recording and photography.

As we understand plaintiffs' contentions, they embrace the assertion that when a person acquires "public interest", he or she loses the right of privacy as to sayings, voice and portraiture. A waiver of privacy applies to a candidate for or occupant of public office, but even there, as Mr. Justice Cobb points out in the *Pavesich* case, the waiver is not absolute: "He thereby waives any right to restrain or impede the public in any proper investigation into the conduct of his private life which may throw light upon his qualifications for the office or the advisability of imposing upon him the public trust which the office carries. But even in this case the waiver does not extend into those matters and transactions of private life which are wholly foreign and can throw no light whatever upon the question as to his competency for the office or the propriety of bestowing it upon him. One who holds public office make a waiver of similar character, that is, that his life may be subjected at all times to the closest scrutiny in order to determine whether the rights of the public are safe in his hands; but beyond this the waiver does not extend."

The expression "public interest" used in connection with the waiver of privacy by a man or woman is not synonymous with "public curiosity". Simply because one person or a million people are "curious" about an individual, does not bring his whole personality, private life, private affairs, voice and portrait into the public domain, so that his photograph may be bandied about, sold, hawked on the streets, or displayed on the walls of the saloon, or so that what he may chance to say may be surreptitiously recorded and similarly used. It is not "curiosity" which may cause a man or woman to lose privacy, but intentional conduct on the part of such person inconsistent with privacy, and which will result in a waiver thereof to the extent of such inconsistency. To again quote the Supreme Court through Mr. Justice Cobb: "This waiver may be either express or im-

plied, but the existence of the waiver carries with it the right of an invasion of privacy *only to such an extent as may be legitimately necessary and proper in dealing with the matter which has brought about the waiver.* It may be waived for one purpose and still asserted for another; the liberty waived in behalf of one class and retained as against the other class; it may be waived as to one individual and retained as against all other persons." It is manifestly true that one does not lose the right of privacy *simply because* the newspaper, radio and television may by their writings and broadcasts have whipped up curiosity about such person. Public interest in a litigation in court does not result in a loss of the right of privacy or of any other right by witnesses who obey the mandate of the court to testify in the cause.

What has been heretofore said about witnesses applies equally to all other participants in trials who appear under the compulsion of law, i.e., jurors, plaintiffs and defendants in civil actions, infants and others under legal disability attending court in relation to their custody or property; and, on the criminal side of the court, persons accused of crime and the prosecutors in such cases.

It is correct to say further that whatever status such persons may have, generally in life and society, they all have the same status before the Bar of the Court, and while in compulsory attendance upon the court are entitled to the status of privacy pertaining to such persons, at least within the Courthouse and its precincts and entrances, which include the Courthouse Square. Thus, the fact that a witness or other person similarly situated may have by his conduct waived his right of privacy generally, is not to be taken as a waiver of it as a witness in attendance upon the courts.

We further hold that attorneys at law do not, by appearing before the Bar of the Court pursuant to their licenses to plead and practice in the courts, consent, either expressly or by implication, to the portraiture of their persons or the recording of their sayings in the Courthouse

Square while coming to or leaving a session of the court in which they are engaged.

The law provides that trials shall be public. The word "public" is used here in opposition to "secret". It is not meant that every person who sees fit shall in all cases be permitted to attend. The requirement of a public trial is for the benefit of the litigants; that the public may see that they are fairly dealt with, and that the presence of interested spectators may keep the triers keenly alive to the sense of their responsibility and to the importance of their functions. The requirement is fairly observed; if without partiality or favoritism, a reasonable proportion of the public is suffered to attend, notwithstanding that those persons whose presence could be of no service to the parties, and who would only be drawn thither by a prurient curiosity, are excluded altogether. See *Cooley's Constitutional Limitations*, Page 312.

Consequently, the law does not require that a spectator, lawfully in attendance, surrender the right of privacy as to voice or portraiture before being permitted to come to court. And as here a spectator cannot attend the court without entering by the Courthouse Square and leaving thereby; there is no waiver by such spectator of the right of privacy while in the Square.

We further hold, by way of generality, that no participant in a court of justice in this State, waives or renounces his or her right of privacy in the particulars above mentioned while in the precincts of the court as an incident to such attendance.

It is most important that it should be so. It is inconsistent with the principle that the courts of justice are open to all to require of a litigant therein that in order to prosecute or defend his case, he must agree to submit to the practices here claimed. To subject witnesses, jurors and others compelled to attend court to such submission would be an indignity which they should not be required to undergo in the absence of positive legislative requirement.

Tragedy and sorrow fill many pages in the book of court proceedings. The sufferings written on the faces of men and women, the tears of little children, the tragedy and heartache that so often of necessity accompany the administration of justice are in no legitimate sense in the public domain, so that they may be recorded by the equipment and cameras of these plaintiffs and distributed and broadcast throughout the world. These are the private possessions of those who are brokenhearted and afflicted, and the law owes it to its humanity, as well as to its justice, to protect them from exploitation.

Plaintiffs' Claims as They Relate to the Duty of the Court to Provide Fair Trials and Due Process of Law.

Noted already is that the right to a fair trial, the right to the due process of the law, and the right to jury trial in cases at law are constitutional rights in this State. These rights exist in favor of the litigants, and against the State as a duty which the State owes to itself as a just government, separate and apart from the individual liberties of silence and privacy above referred to.

Fair trial and the due process of the law require that witnesses be free from outside interference during the trial. To permit a situation whereby the witnesses are subjected to interviews, interrogations, recordings of such interviews and interrogations, recording of what they may be overheard to say, photography, moving pictures and television recordings, etc., as they arrive at court in the morning and as they leave court at the end of the day, would be to permit that which is calculated to distract and disturb. Persons subpoenaed to court as witnesses perform a difficult private and public duty. Many witnesses undergo considerable mental anxiety by reason of being called. Cross-examination by the most courteous counsel can sometimes be an ordeal to the most conscientious witness. To fulfill his oath every witness is required to be completely attentive to the business in hand. The law provides it is the right of a witness to be

xamined in court only as to relevant matter; and to be protected from improper questions and from harsh and insulting demeanor. *Code, Section 38-1704.* Certainly in the interest of justice the witness should not be cross-examined on the Courthouse Square, and photographed and televised there, before he or she can get in and out of the Courthouse. The psychological effect of such a circus-like proceeding is calculated to distract the attention of the witness from his oath.

Essential to fair trial and the due process of the law is that the jurors trying the case shall not be diverted from the sworn evidence. For jurors to make their way through crowds of newspaper photographers, television cameramen, newsreel cameramen, radio recorders, individuals engaging in their individual photographic sport, candid-camera fans, all engaged in photographing and recording, and the crowd of curious attracted thereby, is calculated to divert the attention of the jurors from the evidence. Such procedures subvert fair trials and the due process of the law.

To some extent these adverse effects can be avoided by officers clearing the way before the approach of the jury, and by not permitting the jury to disperse. But this does not wholly relieve the ill effect; nor should the court be required to conduct its proceedings according to the directives of others.

It is true beyond cavil that a spectacular, circus-like, sideshow-like atmosphere surrounding a trial in court is incompatible with the administration of justice. We are not here speaking of the dignity of the proceedings, but simply of the capacity of the essential participants to bring their minds and attentions deliberately to the solemn task in hand.

The cases attracting public notice are the ones in which the above conditions would fully obtain. The court cannot shut its eyes to the increasing competition between newspaper, radio and television interest. These enterprises, in the nature of things, competing with one another, and with

each other, would "cover" trials in court with progressive zeal and intensity. Each would try to take more photographs than the other; each would try to get more sound recordings than the other; each would try to get more "newsworthy" poses of the witnesses; and "newsworthy" views of the parties and other participants. There would be competition as to what interrogator of witnesses, parties, spectators and other participants, produced the most interesting narrative. When a fight occurred in the Square this *would* be real "news". Criminal cases probably would produce the greater activity. One group might take the position that the defendant was innocent, and another group that he was guilty. The victim of the crime, particularly if a woman, would be photographed from every angle, to put it mildly. The accused and his family would be exploited to the last sound recording and photograph. The sure result of all this would be to poison the stream of justice. Jurors listening to the radio and television and reading the newspapers, and listening to the evidence in court, would have difficulty in distinguishing between the sworn evidence and the unsworn poison.

The rule as stated by the annotator at 52 A. L. R. (2d) 183 is:

> " . . . the law contemplates that no outside influence shall be brought to bear upon a jury impaneled to try a case, and that where it appears that the jury has been subjected to extrajudicial influence or suggestions during the pendency of the case which they are sworn to try, a new trial may be granted unless it appears that no prejudice resulted from such misconduct. An impartial jury, selected and kept free from all outside or improper influence, has always been regarded as necessary to a fair and impartial trial, and anything not legitimately arising out of the trial of the case, which tends to destroy the impartiality of the juror, should be discountenanced. 35 Am. Jur. 109, New Trial Sec. 95."

As to the duty of the court in criminal cases, the Supreme Court has said in *Blackwell* vs. *State*, 87 Ga. 76, 81:

> "It is the duty of courts to hold over every citizen, however humble, when arraigned for crime, the broad aegis of the law, and to see to it that he has the full measure of its humane protection until, on a fair and impartial trial, under its rules, he has been duly convicted."

The duty to afford a fair trial applies equally in civil cases. That statements in that regard have been more frequently made in criminal cases is simply because the necessity therefor has arisen more often.

The majority of defendants in criminal cases make bail and are on bail during the trial. If plaintiffs and other private persons have a right to compel them to submit to their interrogation and to record their answers, this is a greater right than the public authorities have. If these defendants on bail can be compelled to exhibit themselves at the demand of plaintiffs, this is a greater right than the right the judge has on the trial of the case. See, *Blackwell* vs. *State*, *supra*, where it was held error for the trial judge to require the prisoner to exhibit his amputated leg to the jury, as that was compelling him to give evidence against himself by such act. See, also, *Day* vs. *The State*, 63 Ga. 667, where it was held a violation of the defendant's constitutional right when his foot was forcibly placed in tracks near the scene of the burglary, and testimony given that his foot and the tracks were of the same size.

The rights which plaintiffs claim for themselves against witnesses, it is proper here to also add, are greater than those which parties litigant may demand of right on the trial of a case. For example, a party cannot require that the court compel a witness to smell and sniff for the purpose of testing his ability in that connection. *Hall* vs. *State*, 53 App. 365, 366(6). See, also, *Hudson* vs. *State*, 46 App. 668, and *Corley* vs. *State*, 64 App. 841, 844.

Exactly What Is and What Is Not Covered by the Portion of the Rule in Question.

The Rule expressly provides for the taking of shorthand and longhand notes of the trial proceedings by the press and public. Every word of the evidence and every other word spoken may be taken down and published by newspaper, radio, television, word of mouth or otherwise.

What the Rule prohibits is sound recording and photography. What that portion of the Rule under attack prohibits is sound recording and photography within the Courthouse Square, and its prohibitions are limited as heretofore stated.

So far as the Rule itself is concerned, the prohibition against photography stops when the witness or other person attending the trial leaves the Courthouse Square. So far as the Rule is concerned, the prohibition against sound recording terminates when the witness or other participant leaves the Courthouse Square. So far as plaintiffs and the general public may lawfully do so, they can sound record and photograph at will just as soon as the trial participant leaves the Square. If the witness or party wishes to go to the newspaper office, there is nothing in the Rule to prevent his going there and having his picture taken. If he wishes to pose for photographs at any place outside the Courthouse Square, there is nothing in the Rule to prevent it.

The Rule does not prevent access to any source of information concerning the court proceedings. As stated, every word of the evidence and every word of the proceeding may be taken down in longhand and shorthand. The only way to form an intelligent opinion of a case in court is to hear every word of the proceeding. Less than this, from a standpoint of information, is not only useless, but harmful.

It is proper here to point out that what is here complained of relates exclusively to photography of trial participants in the Courthouse Square as they come to court, leave court, and while in attendance on court; and making

sound recordings of what they may be overheard to say and what they may say upon interrogation, during the same times and in the same place; and that nothing whatsoever of an informative nature concerning the case on trial could result from such photography and sound recordings.

It may well be true that newspapers, television programs and radio programs would be embellished by such recordings and photographs, and that newspapers, periodicals and radio and television broadcasts might thereby attract added patrons. More newspapers might be sold. *Some radio and television talent which is now paid might be dispensed with. The trial participants could be used as actors without pay. A just appraisal of plaintiffs' attack must recognize that it is made solely for commercial and monetary gain.*

The Rights of Petitioners and Others as to Such Recordings and Photography Under Statutes and the Common Law.

As heretofore shown, there is no right under the Constitutions to make sound recordings and photographs of trial participants in the Courthouse Square. Such conduct is not embalmed in the Constitutions as a part of the liberties of speech and of the press. There is no statute in Georgia conferring such privilege upon plaintiffs or anyone else. Under the principles of the common law participants in trials in the Courthouse may be photographed and their sayings recorded in the Square only in keeping with the following: (1) The public streets and sidewalks comprising the Square are primarily devoted to passage and travel, and such photography and recording must not interfere therewith. Any such photography and recording would be engaged in only as a mere privilege by the permission of the authorities; (2) the consent, express or implied, of the person photographed or recorded must first be obtained. One does not consent thereto merely by attending court; (3) photography and recording must not be under such circumstances as poison the stream of justice or interfere with the witness, juror, party or other person in relation to his

participation in the proceedings of the court; (4) such recording and photography must not be calculated to impair an impartial trial or the due process of the law; (5) such recording and photography must not be contrary to the rule or practice of the court.

Truth Is Not Defense to Violation of Privacy or of the Right to Fair Trial and Due Process of Law.

It has heretofore been observed that at the common law truth was a defense against an action for the publication of a libel, irrespective of the motive of the publisher, and that this rule, obtains in Georgia. It has heretofore been pointed out that as against a public prosecution for a criminal libel, the truth may be given as evidence in this State, and that the rule as to the effect thereof is either that it is an absolute defense, or that it is a defense if published with good motives and with justifiable ends, it being unnecessary to here determine the exact law in this State as to criminal libel.

But truth is not necessarily a defense to the violation of the rights of privacy. Thus, if one should publish a photograph of another without his consent, express or implied, and in violation of his rights or privacy, the fact that the photograph might be a true likeness would not justify its use. So a judgment was rendered for the publication of the photograph of the plaintiff taken in her hospital bed, without her consent and over her protest, although there is nothing to indicate that the photograph did not correctly portray the likeness of plaintiff as she lay in her bed. *Barber* vs. *Time, Inc.*, 348 Mo. 1199, 159 S. W. (2d) 291.

So it was held that the unauthorized use of one's name in a radio dramatization of a holdup in which that person was the victim was a violation of his right of privacy. *Man* vs. *Rio Grande Oil, Inc.*, 28 Fed. Supp. 845. And producing and selling a moving picture of the life of a person with its unsavory past events from which that per-

son had reformed, was actionable. *Melvin* vs. *Reid*, 297 Pac. 91.

Nor does truth justify publications calculated to deprive persons of their rights to fair trials and the due process of the law. The business of determining litigated cases is that of the courts of justice, and all persons have a right to have their cases determined in court upon the sworn evidence. To approach a juror during the trial of a case, interfere with him in the discharge of his duties by recounting to him facts concerned with the case, is not justified merely because what may be thus communicated to the juror is true. To interfere similarly with a witness is not justified merely upon the ground that what is said to him may be true. To poison the stream of justice by publishing comments on the trial, during the course of the proceeding, is not stripped of its character as a grave offense because what may be said is true. Otherwise cases would not be decided by the courts and jurors upon sworn evidence presented before them. A trial in court would be merely a method of registering the judgment otherwise arrived at.

The Duty of a Court in Respect of the Dignity and Solemnity of Its Proceedings

The Court is a sacred place. The law administered there is based upon the principle that every man is entitled to his due which is founded upon the Holy Scriptures. The judge is sworn to do equal justice to the poor and to the rich. The clerks, sheriffs and bailiffs are all sworn to perform their duties according to law. The lawyers who practice before the Bar have taken their oaths of office. The jurors take a solemn oath. The witnesses, according to our statute, may be sworn either with or without laying hands upon the Holy Evangelist of Almighty God, but they are required to swear or affirm to tell the whole truth. Thus, all participants in the trial swear or affirm, "so help me God."

The proceedings of the court, and all that is done in connection therewith, in all the precincts of the court, including the Courthouse Square, should be surrounded by an atmosphere appropriate to the solemnity and importance, as well as the sacredness of what is there done. Men come before the Bar of the Court and their lives are taken. Men come before the Bar of the Court and are committed to prison for long terms. Before the Bar of the Court rights of property are litigated and determined. The most important rights of person are litigated and determined. Children are taken from or restored to their mothers' arms. Upon the judgments and decrees of the court, and upon the fact that the court sits to administer the laws of the State, depend the lives, the liberty and the property of the citizens of the State. To make a carnival and a circus of its proceedings is not permissible.

It Is Not Significant That the Rule Extends Into the Square—Illustrations:

That the operation of the Rule extends beyond the Courthouse Building and into the Courthouse Square in and of itself is without significance. It is the nature and character of the Rule, its content, and not the geographical or territorial extent of its operation which determine its validity. In a proper case and for proper purposes the court has jurisdiction throughout the limits of the State. But as to a matter not belonging to the Judicial branch of the Government, not coming within the authority of the Courts of Judicature, not affecting the conduct of the business of the court, a matter legislative or executive rather than justiciable, the court is without any authority at any time or place. Thus the court can compel a witness to leave his home and business in any county of the State and attend its sessions until excuse .; and the witness in all his comings and goings, throughout the course of his journey, as he is under the command of the court, so he is likewise entitled to its protection, the extent of which is neither measured, limited nor circumscribed by the geographical

distance from the seat of the court. But, on the other hand, to prescribe rules of sanitation for businesses operating on the Courthouse Square, in cases in which the conduct of the court was not affected or impeded, or to fix the tax rate upon them, would be beyond the jurisdiction of the court because neither is a judicial matter, and proximity to the place where the court sat would not confer authority. In short, the measure is subject matter, and not distance. If a rule of court relates to the transaction of the business of the court and to persons attending the court, the geographical extent of its operation is immaterial.

Nor can the authority of the court to make a rule relating to the conduct of its business, and persons attending the court, be equated to the authority of the court to punish for contempt. In many cases the same conduct might amount to violation of the Rule and to a contempt in the absence of the Rule. But a violation of the Rule would amount to a contempt because the Rule had been violated and not necessarily because the conduct would have amounted to a contempt in the absence of the Rule. The power of the court to punish for contempt rests upon the authority vested in the court to deal with past acts which constitute contempts of the court. The power of the court to make rules for the conduct of its business and the protection of persons attending the court, rests upon the principle that independent courts have the power to make their own laws in relation to these matters. When such rules are made and declared in advance, and violation of the rule is punished as a contempt, the contempt consists in the *violation* of the rule and not in the conduct which amounted to violation. See and cf. *Ex Parte Sturm, supra.*

To illustrate: A is on trial for the murder of Mr. X, alleged to have occurred during a robbery. A's defense involves an attack upon the character of the deceased. His widow, Mrs. X, attends the trial as a witness. Just as she emerges from the Courthouse onto Pryor Street in

front of the steps the widow is surrounded by employees of Atlanta Newspapers, Inc., who proceed to photograph her over her protests, and subject her to an intensive cross-examination about her dead husband's character, which they record on sound-recording equipment. It is several minutes before she can get away, and she is so torn up by this experience that the court has to recess two days before she is sufficiently composed to take the witness stand. Mrs. X's photographs are published in plaintiffs' newspapers, the sound recordings broadcast over its radio station and the motion pictures and sound recordings presented over its television station. These acts would constitute a violation of the Rule, and would be punishable as contempt because violative of the Rule and not because they were calculated to obstruct justice or amounted to contempt independently of the Rule.

To illustrate further: Suppose the same situation and the same state of facts, except that the scene of operation, instead of Pryor Street at the Courthouse steps, is Pryor Street in the middle of the block between Hunter and Alabama Streets. There is here no violation of the Rule. Whether or not the acts of said plaintiffs' employees would be punishable as a contempt would depend upon their nature, character and propensity in relation to the obstruction of justice, all in the light of the law of contempts. It is hardly necessary to say they would constitute contempt.

To illustrate further: Mrs. Z sues her fifth husband for divorce and alimony and wins her case. She intends to go to Hollywood and get in the movies for which her lawyer has assured her she has several talents. The trial ends Friday, and on Saturday, when the court is not in session, she interviews Atlanta Newspapers, Inc. from the sidewalk in front of the Courthouse steps, and they record the interview and take photographs of the lady, all of which they use in their newspapers, and on their radio and television stations. No violation of the Rule. Independently, no contempt in the facts stated.

To illustrate further: X is on bond awaiting trial to begin on Monday for a criminal offense. Friday afternoon after court has recessed for the week, X interviews Atlanta Newspapers, Inc. from the Pryor Street sidewalk in front of the Courthouse steps and many photographs and sound recordings are made. These are used by this plaintiff over the weekend in a newspaper, radio and television campaign in defense of X, in which his innocence is proclaimed, evidence in his behalf narrated and the prosecution severely denounced, the motives of the Grand Jury indicting him being portrayed as base and in violation of their oaths. On Monday when the trial is scheduled to begin the minds of many of the jurors have been so filled with this propaganda that they will have difficulty attending on the evidence and deciding the case according to the sworn evidence. No violation of the Rule. The question of contempt is to be judged independently of the Rule and according to the principles applicable to cases of poisoning the stream of justice.

To illustrate further: Said plaintiffs become convinced that R is guilty of crime and their investigators uncover evidence pointing to his guilt, take affidavits of witnesses and publish them. Said plaintiffs' photographers follow R about and take numerous photographs of him, publishing those which present him unfavorably: scratching his head, picking at his nose, with his mouth open, looking popeyed from the glare of the camera flashlights, etc.; etc. The Grand Jury indicts R. Said plaintiffs believe it is their duty to put him in the penitentiary, and day by day they publish details of the evidence against him, inferring he is guilty as charged; that he is a rascal; and they illustrate these articles with the photographs. Over their radio and television stations they broadcast recordings of interviews with the witnesses against R. These publications and broadcasts continue up to the day of the trial. No violation of the Rule. Independently of the Rule, the case is to be judged by the principles applicable to poisoning the stream of justice.

To illustrate further: Mrs. S, a well-known and respected matron, leaves her home to go to the jail and make bond for a nephew who has been indicted on a morals charge. Said plaintiffs' photographer takes her picture on the street in front of her house and it is published with her name under the legend "Makes Bond in Moral's Case." Many people believe Mrs. S was herself charged with some morals violation. No violation of the Rule. Recourse of Mrs. S would be by suit.

To illustrate further: Said Mrs. S comes to court to attend her nephew's trial as a spectator. As she leaves during the noon recess she is stopped in front of the Courthouse where she is questioned about her nephew's case and her own social position and church work and her answers recorded by sound recorder. She is photographed while being thus cross-examined. Rule is violated.

To illustrate further: Miss L is robbed and badly beaten. As she lies on the street in this condition, with her clothing torn from her body, photographs are taken and published in said plaintiffs' newspapers and presented over its radio and television stations. The picture is also sold individually. No violation of the Rule.

To illustrate further: Miss L attends court to testify against persons indicted for the robbery. During the first day of the trial she is excused for the remainder of that day and told to report the following morning. As she leaves the Courthouse said plaintiffs' photographers are stationed across Pryor Street and take her picture, which is published in their newspapers and used in their broadcasts. It is also sold individually. The Rule is violated.

To illustrate further: Said photographers are stationed on Washington Street as they think Miss L will come there after the trial, which she does, and they there photograph her over her protests and insist upon cross-examining her about the case, making sound recordings of the "interview". Both photographs and recordings are used commercially. No violation of the Rule. Whether contempt is here will depend upon the principles applicable thereto.

To illustrate further: A parade passes down Pryor Street in front of the Courthouse and during trials. Photographs and sound recordings are made and commercialized. No violation of the Rule.

To illustrate further: Mr. and Mrs. C. D. lose their lives in an automobile accident, leaving one child, a seven-year-old daughter. The maternal and paternal grandparents are unable to agree as to the custody of the little girl, and habeas corpus litigation results to determine her custody. One morning during the trial the little girl is stopped on the sidewalk as she is about to enter the Courthouse and interrogated as to which set of grandparents she prefers to live with. Her replies are sound recorded and pictures are taken of her. All of this material is put to commercial use. Rule violated.

To illustrate further: Custody is awarded to the paternal grandparents. All four grandparents and the little girl walk down the Courthouse steps at the same time. As the paternal grandparents turn away on the street with the child, the other grandparents break down and weep and one of them reaches out and clasps the little girl in her arms. The cameras click and the sound recorder records. The pitiful scene and the lamentations and sobs of the grandparents and the cries of the little girl are all used commercially by said plaintiffs in their newspapers and radio and television stations. Rule violated.

To illustrate further: Miss J is injured in an automobile accident when a truck driven by a drunken driver sideswipes the automobile in which she is riding as a guest. Miss J's face is cut 48 times by glass, and results in a lifetime disfigurement. As she comes down the Courthouse steps during a recess of her suit to recover damages for her injuries she is photographed. Rule violated.

To illustrate further: Mr. H is summonsed as a juror for the first week in January. He attends, and on Monday is excused from service in a murder case because he is opposed to capital punishment, and on Tuesday from service in a divorce case because he is opposed as a matter

of religion to granting divorces for cruel treatment. Wednesday morning he is stopped on Pryor Street in the Courthouse block and cross-examined as to his views on these matters; he is also photographed while explaining he does not care to be cross-questioned on the public street as to his religious principles. Recordings of the "interview" and these photographs are used to illustrate feature articles and broadcasts on the jury system. Rule violated.

To illustrate further: Mr. H serves Thursday and Friday in a damage suit case and a verdict is reached for the defendant although the plaintiff had lost a leg in the automobile accident. As Mr. H leaves Friday night he is stopped on the Courthouse Square and interrogated about the deliberations of the jury, a record being made of his replies and statements that he did not care to disclose what was said by his fellow-jurors; photographs being also made. Rule violated.

To illustrate further: Mr. H is cross-examined and photographed at the newspaper office where he has gone for that purpose and recordings are made of the interview. No violation of Rule.

To illustrate further: A child is run over and killed by an automobile in front of Mrs. F's home as she sits on the front porch, and she attends court as a witness under subpoena. During the trial she is excused to go to the drug store and get some medicine for a bad headache with which she is suffering. One of plaintiffs' reporters stops her on the Courthouse Square and tells her he wants to get a recording of her impressions of the proceedings to play over the radio and television. Mrs. F informs him she is not interested, to mind his own business, and when he persists, she "blesses him out." During the transaction Mrs. F is photographed and one of the pictures shows her with her mouth wide open as she was expressing her indignation. This is the one which is published in the newspapers and displayed over the television. Rule violated.

To illustrate further: Miss M is a model who sues a store for salary she claims is owed her for services. During

the trial she is photographed on the Courthouse Square. Rule violated.

To illustrate further: Miss M is photographed on the City Hall lot. No violation of the Rule.

To illustrate further: Mr. T is a poor man with a large family. He has tried to rear his children according to high principles, but one of his sons fell in with bad company and he and others are indicted for a terrible crime. There is no money with which to employ a lawyer and the court appoints a lawyer to defend the boy, who, being guilty, is duly convicted. As their son is being brought from the Courthouse to be placed in the prison bus standing on Pryor Street, permission is granted Mr. T and his wife, Mrs. T, the boy's mother, to speak a word of farewell, and Mrs. T embraces her son. The photographers take pictures of the three standing there on the street and it is published. The ensuing notoriety causes Mr. T to lose the job he has held for 40 years. Rule violated.

To illustrate further: Indicted with the son of Mr. T is the son of Mr. E, a wealthy man of wide influence. Mr. E's son is also guilty and duly convicted. His parents leave the court together, heavy with grief, their cherished hopes and dreams for their boy all gone. Mr. E has suffered for several years with a bad heart. As he raises his foot to enter his automobile parked on the curb in front of the Courthouse, Mr. E drops dead and falls upon the street, and his widow swoons and falls across his body. The cameras click and the photographic bulbs pop. Rule violated.

See, generally, *Morgan* vs. *State*, 26 Apps. 83, where the contempt consisted in insulting the witness in the Courthouse yard, *Burge* vs. *State*, 38 Apps. 690, where the contempt was in intimidating the witness at the door of the Courthouse; and *Herring* vs. *State* and *Echols* vs. *State*, 165 Ga. 254, where the contempt was in statements made to the father of the witness at the father's residence intended to be communicated to the witness.

See, also, *7 Am. & Eng. Enc. of Law* (2d. Ed.), p. 54, notes 1, 2 and 4, as to parties and witnesses being entitled to

protection from arrest while going to and returning from the place of trial.

Courts of Justice Usually Provide Rules of This Character or Have Practices Along Similar Lines.

No regular judicial session in either the Supreme Court or the Court of Appeals has ever been photographed or broadcast by radio or television. The Supreme Court refused permission to photograph the courtroom during the two-governor litigation in 1947. When one phase of that litigation was tried in the Superior Court of Henry County by His Honor the late Judge Walter C. Hendrix, of the Atlanta Judicial Circuit, Judge Hendrix, upon coming into the courtroom in McDonough, observed in the balcony a line of machines, radio equipment and cameras. He called the sheriff and directed that they be removed instanter, after which the trial would proceed. The long standing written rule of the Superior Court of Fulton County has already been quoted. Reference has been made to the Westmoreland County, Pennsylvania rules and the orders of the respective courts in the Florida and Maryland cases, cited supra. The Supreme Court of the United States does not permit its proceedings to be photographed or broadcasted by radio or television. Pursuant to Acts of Congress that Court regulates conduct in its buildings and grounds. *U. S. C. A., Title 40, Sec. 13 (f) through 13 (p)*, inclusive: *Chapter 479, Public Laws 250, 81st Congress*, approved August 18, 1949. The Federal Rules of Criminal Procedure, promulgated by the Supreme Court of the United States, *Rule 53, 18 U. S. C. A.*, prohibit the taking of photographs in the courtroom during the progress of judicial proceedings. *Note 1* at page 68 of *126 Atl. Rep. (2d)*, states that many Federal Courts have adopted rules similar to the Westmoreland County rules, citing *Volume 37, Journal of American Judicature Society, February, 1953.*

Judicial Canon 35 of the *American Bar Association* provides as follows:

> "Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the court room, during sessions of the court or recesses between sessions, and the broadcasting or televising of court proceedings are calculated to detract from the essential dignity of the proceedings, distract the witness in giving his testimony, degrade the court, and create misconceptions with respect thereto in the mind of the public and should not be permitted.
>
> "Provided that this restriction shall not apply to the broadcasting or televising, under the supervision of the court, of such portions of naturalization proceedings (other than the interrogation of applicants) as are designed and carried out exclusively as a ceremony for the purpose of publicly demonstrating in an impressive manner the essential dignity and the serious nature of naturalization."

Sir Reginald Manningham-Buller, Q. C., M. P., Attorney General of England, writes in response to our inquiry:

> "The taking of photographs in English courts is prohibited by law. The relevant provision is Section 41(1) of the Criminal Justice Act, 1925, which provides that—
>
> "'No person shall (a) take or attempt to take in any court any photograph, or with a view to publication make or attempt to make in any court any portrait or sketch, of any person, being a judge of the court, or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal; or (b) publish any photograph, portrait or sketch taken or made in contravention of this section or any reproduction thereof; and if any person acts in contravention of this section he shall, on summary conviction, be liable in respect of each offence to a fine not exceeding £50.'

"There are no express provisions dealing with the televising of judicial proceedings, but I can assure you that no English court would permit any of its proceedings to be televised."

This year the Supreme Court of Bermuda permitted a formal portrait to be taken of the Court in session for the purpose of celebrating its 350th Anniversary, which was the first photograph ever taken of that court. The *Illustrated London News No. 6245*, Vol. 234, Page 271, February 14, 1959.

The United States Senate has never permitted photographs or broadcasts of its proceedings.

On the argument it was suggested by counsel for plaintiffs that for a violation of their rights of privacy, witnesses and others should be required to file actions at law for damages. We simply say: the court is not required to be so pusillanimous as to deny due protection to those whom it commands to appear before it; and that the duty of the court extends to the protection of those whom its processes compel: and that its authority is coextensive with its duty.

Also argued in respect of this matter of protecting witnesses, jurors, etc., was that the Rule extends into the Square, which is "too far", and that there ought to be a "cutoff" place. As to that, we say there is no "cutoff" place in relation to fair trials, due process of the law, the dignity of judicial proceedings and the protection which the court owes to those whom it summons.

It is said further that the court should deal with untoward conduct in the Square *after it occurs*: We think it better to *prevent it.*

The Real Issue Presented Here

If the portion of the Rule which the plaintiffs attack be invalid as claimed by them, it follows that the presiding Judge cannot by rule exclude from his courtroom the news-

paper camera, the newsreel camera, or the television camera. Plaintiffs do not in this case claim the right to "open up" the actual courtrooms to these equipments and devices. But their argument that the Judge can forbid only that which by some noise or physical disturbance prevents the progress of a trial, leads to that result. As the Supreme Court of Pennsylvania said in the case in which attack was made upon the Westmoreland County rules:

> "The defendants repeatedly assert that they do not contend for the right to take pictures within the court room, even by the infra red ray method which is accompanied by no display or disorder. But it must be conceded that if we sustain their contention that this rule of court infringes upon their rights of freedom of the press, the court likewise would have no power to forbid the taking of pictures in the court room which were accompanied by no disorder or disturbance."

Indeed, if plaintiffs' contentions be correct, they could lawfully insist upon the right to install a microphone in the courtroom and transmit the proceedings through a loudspeaker on the street. Or, in a case in which the court had excluded minors from the courtroom because of the nature of the testimony, plaintiffs could lawfully re[illegible] and admit those same minors for a fee to listen to the very evidence the court had directed they should not hear.

Thus, the question is whether the trial Judge who is charged by law with the duty and responsibility of affording a fair trial to those before the court, and with the duty and responsibility of conducting the business of the court in a proper manner, with due regard for the rights of all participants and the dignity, importance and solemnity of the proceedings, has the power and authority under the law to adopt such rules in relation to the business of the court as *in his judgment and discretion are* proper and needful to attain these ends. Thus the real issue presented here is: *No more nor less than that of the independence of the courts.*

The Independence of the Courts

The independence of the courts is essential. A court which bends to winds that blow is no court of justice. The maintenance of this independence rests primarily with judges and lawyers. In the nature of things this must be so. The general public looks to the Bar for guidance, advice and direction with respect to court matters. Grand Jurors and trial jurors serve briefly. Litigants are concerned with winning their cases. Business and political groups as such turn their attention to the propagation of their own causes, and this is understandable; it is when the citizen stands erect before his better self, casting aside all selfish consideration, that he realizes the magnitude of the misfortune to befall with the fall of the independence of the courts.

It will be an evil day in Georgia when Judges think more of office-holding than of the independence of the courts; when lawyers in the pressure of their private businesses cease to uphold the independence of the courts; when cases are decided on the basis of popular uprising, newspaper accounts, supposed public opinion, the popularity of the parties or their social, financial or other positions in the community, election returns and like regards, rather than on the basis only of the evidence and the law. But unless the independence of the courts is preserved that day will arrive.

The principle of the independence of the courts includes the following: Cases are decided on the basis of settled law applied to sworn evidence submitted in the face of the parties. The only cases considered are those justiciable under the laws and within the jurisdiction of the courts of judicature. Decision is not a mere matter of personal opinion of the judge and jury, but must be upon the application of the law to the facts. Determination of the cases within their jurisdiction is exclusively for the courts. The administration of justice is the court's business. No one whomsoever has any right to interfere with the business of the court.

In relation to the transaction of the business before it the court possesses authority to make all needful rules which relate to the exercise of its jurisdiction and the transaction of its business. The judge of the court determines what rules shall be prescribed for the court over which he presides. All persons are bound by these rules. The power to make its own rules is a necessary attribute of an independent court. In Georgia the power inheres in the court, and Code, Section 24-106, gives the rules the force of statute.

That judicial authority must be independently exercised is a component of the principle that the individual possesses the natural rights of personal security, personal reputation, and private ownership of property. Otherwise, the State might lawfully take the life, the liberty or the property of any man, woman or child whenever the governing authorities thought such was in the public interest. But under our system, whereby we say that in Georgia the individual does indeed have these possessions as of natural right, in the same breath we say that they can best be protected by a judiciary which is not subservient to any other branch of the government, and which possesses in and of itself all the power necessary to the discharge of its functions.

Courts are composed of human beings, liable to error, and from time to time they do err. But this is no argument against the principle of independent courts. Any other tribunal would have the same human composition. Nor is this any reason why anyone should interfere in the business of the court. The decisions of the lower courts are subject to review. The judges of all the courts are responsible both to their oaths and to the people. Those unthinking, who join with them whose purpose is to ravish the Georgia courts of their independence, do themselves as well as the whole State a disservice.

Findings of Fact

The Court makes the following findings of fact:

1. On October 12, 1958, a house of worship in Fulton County, Georgia, known as The Temple, was damaged by an explosion, and the charge that the house had been bombed was widely publicized throughout the State, the United States and foreign countries. The matter was the subject of widespread comment by the general public, press and public officials, including the President of the United States.

2. George Bright, Wallace Allen, Luther Corley, Kenneth Griffin and Robert Bolling were lodged in jail charged with the crime, and on October 14, 1958, obtained issuance of the writ of habeas corpus, which was set for hearing on the afternoon of October 17, 1958, in the Fulton County Courthouse.

3. On October 16, 1958, the two counsel who represented these men in the habeas corpus proceedings addressed a crowd gathered on the sidewalk and street in front of the Courthouse steps. These addresses were recorded for radio and television and subsequently portrayed over one television and several radio networks. On the sidewalk and street at the time were mobile units of television stations, cameras and equipment of representatives of newspapers and of radio stations and press services, and photographic equipment of other individuals. The circumstances surrounding these addresses are stated under the heading "Construction of Rule Dated November 3, 1958."

4. On October 17, 1958, the Grand Jury indicted Wallace H. Allen, Kenneth Chester Griffin, George Allen Bright, Robert Bolling and one other for violation of Code, Section 26-2303, a capital offense. Prior to the habeas corpus hearing held that afternoon at two o'clock the men named in 2 above were brought as prisoners to the Fulton County

Courthouse by the Sheriff of the County in the prisoners' bus, shackled to a chain for safety and convenience of transportation to the habeas corpus trial. As they were taken out of the prisoners' bus on Pryor Street they were photographed. While they were in the corridors outside the courtroom where the hearing was to be had they were photographed. They were also photographed in the courtroom before the proceedings commenced. Bright, Allen, Griffin and Robert Bolling were again photographed shackled to their chain as they were returned to the jail after the hearing. The circumstances in relation to these matters are stated in said "Construction of Rule Dated November 3, 1958."

5. Said photographings in the corridors and courtroom were all in violation of a Rule adopted and published by the Judges of the Superior Court of the Atlanta Judicial Circuit in commission April 20, 1951, as Rule No. 27 of the Superior Court of Fulton County, as follows:

> "(27) BARRING OF PHOTOGRAPHS No pictures or photographs shall be taken in the court rooms, witness rooms, jury rooms, entrances to the court rooms and passageways to and from the witness rooms and jury rooms. This rule shall apply at all times whether or not the Court shall be in session or recess."

6. Plaintiff Atlanta Newspapers, Inc. carried in the Atlanta Journal a picture of George Bright, Wallace Allen, Luther Corley, Kenneth Griffin and Robert Bolling taken in the courtroom as above stated. This plaintiff also carried in said newspaper a picture showing Bright, Allen, Griffin, Robert Bolling and another shackled to said chain. A copy of the front page of the pink edition of the Atlanta Journal for Wednesday evening, October 22, 1958, was admitted into evidence, and shows these men shackled to their chain under the following caption: "LED BACK TO JAIL ON CHAIN—Leaving Superior Court after being de-

nied bond are the five defendants in The Temple bombing. At left rear is Wallace Allen, right rear a deputy; Richard Bowling with pipe in mouth; Robert Bolling, George Bright and Chester Griffin. They are led by another deputy." Admitted into evidence on the trial was a copy of the final home edition of said newspaper for Saturday evening, October 18, 1958, showing said photograph in the courtroom under the following caption: "FOUR INDICTED MEN IN TEMPLE BOMBING SIT IN COURT BEFORE HABEAS CORPUS HEARING (L-R) George Bright, Wallace Allen, Luther Corley, Who was Freed; Kenneth Griffin and Robert Bolling."

7. After the habeas corpus hearing said counsel again addressed a crowd from the Courthouse steps, and their remarks were recorded for radio and television and subsequently broadcast. The circumstances attendant upon this transaction are as set forth under "Construction of Rule Dated November 3, 1958."

8. Of the men shown in said photographs Luther Corley was discharged by the Court on the habeas corpus hearing; George Bright was tried twice, the first trial resulting in mistrial and the second trial in acquittal; Wallace Allen, Kenneth Griffin, Robert Bolling and Richard Bolling have not been tried and are at liberty under bail, set by the Court by consent of the Solicitor General. These matters are of record in the Court and so noticed.

9. On October 22, 1958, said persons indicted for the alleged bombing filed their demands for trial, and it was contemplated that their cases would be placed on the calendar during the November 1958 Term. Also to be tried on demand during the November Term was the case of The State vs. T. V. Williams, in which the State was expected to have about two hundred witnesses and the defendant thirty-five to forty witnesses. Other cases were to be tried in due course during the November Term. The

Williams case had been the subject of comment, interest and speculation in the press and other media of public information.

10. The business of the Superior Court of Fulton County is rotated among the Judges of the Atlanta Judicial Circuit, so that under the regular system of rotation each of the nine Judges will during the course of eighteen months try eight months of civil jury business, four months of criminal jury business, two months of domestic relations business, two months of non-jury business, and sit two months as presiding Judge and handling chambers business. Under this system of rotation Judge Durwood T. Pye was to preside in the trial of criminal cases and have charge of making the criminal calendar during the November, 1958 Term.

11. In light of the foregoing, it was determined by said Judge to reduce to writing the rule and practice obtaining in his Division in respect of prohibiting sound recording and photography. Theretofore said Judge had had occasion to apply said rule in only two cases, but it had been applied in them, i.e., the case of Commissioner vs. National Association for the Advancement of Colored People and J. H. Calhoun, et al; and a habeas corpus proceeding in which parents sought the custody of their child allegedly detained by an Atlanta Hospital. But the rule had not been reduced to writing.

12. On the first day of the November 1958 Term said Rule as reduced to writing was entered as a Rule and Order of the Superior Court of Fulton County, announced from the Bench and duly recorded on the minutes and in the office of the Clerk. It is correctly set forth in Exhibit "A" of plaintiff's petition.

13. Said Rule and the correct construction thereof are heretofore set forth under "Construction of Rule Dated November 3, 1958."

14. That portion of the Rule which is here under attack relates to the Courthouse Square, which is described under "Construction of Rule Dated November 3, 1958."

15. The physical situation of the Fulton County Courthouse and its Square is as set forth in the stipulation of the parties, which, by order of the Court is herewith filed in the Clerk's office, and in the testimony of O. C. Puckett and William S. Abney, and in the lists and papers identified by William S. Abney and referred to in his testimony.

16. A drawing to scale of the Courthouse block appears in evidence as Exhibit "D-R".

17. The Court finds to be facts the statements made as of facts connected with the Fulton County Courthouse, the Courthouse Square, the trial and disposition of cases in the Superior Court of Fulton County, and other relevant matters, which are contained in the preceding opinion.

18. The Court finds to be facts those matters of fact not inconsistent with these findings which are narrated by the witness and which are the subject of documentary evidence in this case. The Court finds to be facts all matters stipulated in this case.

19. Before October 1958 there had never been any general attempt to sound record and photograph persons attending the Superior Court of Fulton County while they were in the Courthouse Square. In the year 1951 some pictures were made and published by the Atlanta newspapers outside the Courthouse in connection with the trial of a man named Fats Hardy, and in the year 1957 some pictures were made and published by these newspapers at the jail in relation to the trial of one Ingram. These seem to be the only such pictures made by these newspapers in the six or so years prior to October, 1958.

20. In October 1958 there was general picture-taking and sound recording and publication thereof in relation to the men charged with the bombing of The Temple, and as shown by the testimony of William S. Abney, Essley B. Burdine and O. C. Puckett. This activity was participated in by many persons.

21. Had said picture-taking and sound recording not been curtailed by the Rule entered by the Court November 3, 1958, jurors, parties, witnesses, spectators and other participants would not have had free access to the sitting of the Court during the trial of George Bright, and the trial of T. V. Williams, held at the November Term, 1958.

22. In the State of Georgia there are published thirty-one daily newspapers, including the two published in Atlanta by Atlanta Newspapers, Inc., and two hundred weekly newspapers. In the State there are thirteen television broadcasting stations and one hundred twelve radio broadcasting stations, which numbers include three commercial television stations and one educational television station in Atlanta, and thirteen radio stations in Atlanta, and include those owned by said corporation. In the City of Atlanta are located two national news services and numerous news agencies.

23. If general sound recording and photography were permitted in the Courthouse Square as to persons attending trials in said Division of the Court, free access to the place where the Court sits would not at all times and during all trials be available to jurors, parties, witnesses, spectators and other participants.

24. Plaintiff Atlanta Newspapers, Inc. desires the privilege (and claims as a matter of right to have and possess the same) of recording the sayings and photographing the persons of participants in trials in the Superior Court of Fulton County, presided over by said Judge, while said

participants are in the Courthouse Square on their way to and from court and while in attendance on the court, except that said plaintiff does not here assert same in respect of jurors engaged in the trial of a case. This plaintiff's contentions in this regard are as set out in the petition in this case and the prayer thereof.

25. Plaintiff Georgia Press Association is interested in said contentions, and makes the contention in its behalf as set forth in the petition, and claims said privilege as a matter of right.

26. Plaintiff Marion Johnson is interested in these matters as the head photographer of Atlanta Newspapers, Inc.

27. Plaintiff Atlanta Newspapers, Inc. would have engaged in general sound recording of the sayings and general photography of the persons of parties, defendants, attorneys, witnesses, spectators and other participants in the cases of the State vs. George Bright and State vs. [illegible]. Williams, tried in said Division during the November 1958 Term, while they were in the Courthouse Square on their way to and from the Court and while in attendance on the Court during the trials, and published the same, except for the prohibitions of Part 3rd. of said Rule.

28. Except for Part 3rd of said Rule Atlanta Newspapers, Inc. and many other persons, firms and corporations would in the future engage in such general sound recording and photography, and publication thereof, during the trials of cases which had been publicized, or which the persons, firms or corporation so engaged desired to publicize, and this activity would become increasingly competitive.

29. The interest of defendant T. Ralph Grimes, as Sheriff of Fulton County, is to perform his official duty, and he has no other official interest in these matters.

30. The Honorable Paul Webb is Solicitor General of Atlanta Judicial Circuit, and in his official capacity acknowledged service in behalf of the State of Georgia. Any interest of the Solicitor General and the State is that which results as a matter of law.

31. The Fulton County Courthouse is crowded. Its facilities are inadequate to accommodate the business to be transacted in the building. The elevators are inadequate to handle the traffic. The Courthouse lot on which is situated the Courthouse, the Administration Building, the Juvenile Court Building and Jail, and on which is being erected the new Civil-Criminal Court Building, is fully occupied. Parking facilities for persons attending court are inadequate. The Courthouse Square is fully utilized for the purpose of travel and passage. These matters are shown in the stipulations and evidence. There is no room in the Courthouse Square for the making of sound recordings and the taking of photographs. Utilization of the Square for such purpose would tend to prevent free access to the Courthouse.

32. Such sound recordings and photography of trial participants in the Courthouse Square as is prohibited by Part 3rd. of said Rule is calculated to interfere with fair trials and the due process of the law in the respects set forth in the preceding opinion.

33. Such sound recordings and photography in the Courthouse Square is calculated to degrade the court, make a show and circus of its proceedings, and create in the minds of parties, witnesses and jurors, as well as that of the public, a misconception of judicial proceedings.

34. Such recordings and photography in the Courthouse Square would deprive participants in trials before the court of their rights of privacy under the law, of the liberty of silence, of the rights of property which they possess in the

portraiture of their own persons, and of the rights and liberties of security of person which inhere in them under the Constitution of this State, all as fully set forth in the opinion preceding.

35. Said Rule Part 3rd. is a just and reasonable exercise of the discretion and power vested in the Court to adopt and promulgate rules for the transaction of its business and for the impartial administration of justice therein.

36. By said Rule Part 3rd. plaintiffs are deprived of no rights which they possess under the Constitutions or the Laws. The use of the Courthouse Square for the purposes desired by plaintiffs would be a mere privilege if permitted by the public authorities. Any recordings or photographs which plaintiffs might lawfully make of persons under the protection of the Rule (except those in custody) can be made by them off the Courthouse Square, and at their offices in the vicinity of the Courthouse.

37. To utilize the Courthouse Square for the making of such recordings and photographs is to compel trial participants to submit thereto, for such participants have no way of coming to or going from court except by way of the Courthouse Square. To permit the practices desired by plaintiffs is to permit the commercialization in their behalf and in behalf of others of the processes of the court against witnesses, jurors, parties and others attending by compulsion.

38. For a court to require a person to attend upon it by compulsion of its order and process and afford him ingress into and egress from the building wherein the court is held, only by such ways as subject him to the recording of his sayings and the photography of his person against his will and without his consent, is for the court to a substantial degree to be involved in the violation of the privacy of such person, which is a trespass upon his natural, primary and fundamental rights.

39. For a court to permit the sound recording and photography of participants in the proceedings before the court, in manner and form as herein asserted by plaintiffs, and as prohibited by said Rule Part 3rd., is to create a situation whereby the right to apply to the courts of justice, the right to a fair trial, the right to a trial by impartial jury in cases at law, and the right to the due process of the law, are calculated to be impaired and subverted in manner and form as set forth in the preceding opinion. To permit such practices is to permit the stream of justice to be poisoned during the trial.

Conclusions of Law

The Court makes the following conclusions of law:

1. The Constitution provides that no law shall ever be passed to curtail, or restrain the liberty of speech, or of the press; any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

2. The Constitution of the United States provides that Congress shall make no law abridging the freedom of speech or of the press. The Supreme Court of the United States has held that the liberties of speech and of the press are under the Fourteenth Article of Amendment of the Constitution of the United States held by the people also against the States. See, *Joseph Burstyn, Inc.* vs. *Wilson*, 343 U. S. 495, 500, note 8, 96 Law. Ed. 1098.

3. In this State the liberties of speech and of the press are the possessions of all persons, the high and the low, the rich and the poor, the white and the black, and may be equally exercised by all.

4. Atlanta Newspapers, Inc. and the other plaintiffs here, are entitled to the liberties of speech and of the press, not because they are engaged in the business of publishing

newspapers and of operating radio and television broadcasting stations, but because they, and their officers, agents, servants and employees are equally entitled thereto along with the whole body and mass of the people.

5. The liberties of speech and of the press do not confer upon any person, firm or corporation the privilege to record the sayings, or photograph the persons of participants in trials in the Superior Court of Fulton County while they are in the Courthouse Square on their way to or from court, or in attendance on the court, as forbidden by said Rule Part 3rd.

6. No statute of the State of Georgia confers such privilege upon the plaintiffs or upon any other person, nor is anyone possessed of such privilege under the common law.

7. Said Rule Part 3rd. does not deprive the plaintiffs of any right which they possess under the Constitution of Georgia or of the Constitution of the United States, or of any right or privilege which they have in virtue of statute or in virtue of the common law.

8. In this State the natural, primary and fundamental right of privacy is possessed by every man, woman and child, and it is under the protection of the Constitution. The natural right of privacy inheres in the possession by each person of an individuality, identity and personality, separate and apart from every other person in the whole community of men, and it is that which has raised the commonalty of mankind from the dust.

9. In this State the liberty of silence, and the right of security of person are possessed by every man, woman and child, and they are also under the protection of the Constitution.

10. Neither the right of privacy, nor the liberty of silence, nor the right of security of person, is lost by party, defen-

dant, prosecutor, attorney, witness, juror, spectator, or other participant in or at any trial in said Division of the Court, by reason of his attendance on the Court as such, while in the Courthouse Square, on his way to or from the sessions of the Court, as provided in said Rule Part 3rd., so as to permit the recording of his sayings and the photography of his person as prohibited thereby.

11. Nor do such persons forfeit the rights of property possessed by them in their voices and their sayings, and in the portraiture of their persons, because of their attendance upon the court.

12. The court in the adoption of rules for the transaction of its business and the administration of justice therein, is authorized to accord protection to such persons while in the Courthouse Square in respect of their rights of privacy, their liberties of silence, their rights of security of person, and their rights of property in their voices and sayings and in the portraiture of their persons.

13. The practices forbidden by said Rule Part 3rd. are calculated to degrade the court, make a show and circus of its proceedings, and create in the minds of parties, witnesses and jurors, as well as that of the public, a misconception of judicial proceedings.

14. The court, in the adoption of rules for the transaction of its business and the administration of justice therein, is authorized to prohibit such practices as are calculated to degrade the court, make a show and circus of its proceedings, and create in the minds of parties, witnesses and jurors, and of the public, a misconception of judicial proceedings.

15. The place wherein a court of justice sits is a sacred place, and it and all its precincts during the sitting of the court should be surrounded by an atmosphere appropriate

to the dignity and solemnity of its proceedings. This is proper for the consideration of the court in the adoption of its rules.

16. In the adoption of such rules the court is authorized to require such situation as will provide, and to prohibit such situation as will prevent, free access to the place where the court sits, at all times and during all trials for jurors, parties, witnesses, spectators, and other participants.

17. In this State the right to apply to the courts of justice, the right to a fair trial, the right to the due process of the law, and the right to a jury trial in cases at law, are all rights secured and preserved by the Constitution in favor of all the people of the State and all persons subject to its jurisdiction. All litigants, whether as plaintiff or defendant in civil cases, or prosecutor or accused in criminal cases, are entitled as of right to a hearing of the cause on the sworn evidence; on evidence adduced from witnesses attentive to their oaths and free from outside influence; in jury cases by jurors free from outside influence; and by a tribunal conducted in such manner as to proceed undisturbed to deliberate consideration of the case in hand upon the basis only of the law and evidence.

18. It is the duty of the court to see that the rights stated in 17 above are at all times and in all cases accorded all persons entitled thereto in proceedings before the court. The court has the authority to take all needful steps to discharge this duty, and may in its discretion adopt rules prohibitory of conduct calculated to interfere with and subvert such rights.

19. It is not lawful to poison the stream of justice, and the court may by rule prohibit conduct calculated to poison the stream of justice during the trial.

20. Any use which the public authorities might permit plaintiffs to make of the public streets and sidewalks comprising the Courthouse Square for their private business purposes would be permissive, and would not confer upon plaintiffs any rights.

21. If the court were permitted by law to confer upon plaintiffs a monopoly of the practices claimed by them against participants in trials before the court, there is no requirement that the court must do so.

22. Under the principles of the common law, parties, defendants, prosecutors, attorneys, witnesses, jurors, spectators, and other participants in trials before the court may be photographed and their sayings recorded in the Square, as they come to attend the court and as they leave after attendance and while in attendance, only as follows: (a) Passage and travel on the Square must not be interfered with; (b) the person recorded or photographed must have consented thereto expressly or by implication; one does not consent thereto merely by attending court; (c) the stream of justice must not be poisoned; (d) there must be no interference with the witness, juror, party or other person in relation to his participation in the proceedings of the court; (e) the recording or photography and any ensuing publication must not be calculated to impair a fair trial, the due process of the law, the right to a trial by impartial jurors, or the right to apply to the courts of justice; (f) such recording or photography must not be prohibited by rule or practice of the court.

23. "The liberty of the press is subordinate to the independence of the judiciary and the proper administration of justice" *12 Am. Jur. 413, Sec. 32*, cited in *McGill* vs. *State of Georgia*, 209 Ga. 500, 503.

24. The practices claimed by plaintiffs are no part of the liberties of speech and of the press, but if they were,

such liberties would be subordinate to the independence of the judiciary and the proper administration of justice.

25. Courts have the inherent power to prescribe such rules of practice and rules to regulate their proceedings and facilitate the administration of justice as they may deem necessary.

26. In Georgia the Superior Court which is created by the Constitution possesses such power by the Constitution which creates the court.

27. The rules of the court, established for the orderly transaction of its business, the administration of justice therein, and the protection of persons in attendance on the court, have the force of statute in virtue of *Code, Section 24-106*: "The rules of the respective courts, legally adopted and not in conflict with the Constitution of the United States or of this State, or the laws thereof, are binding and must be observed."

28. The Superior Court in Georgia is an independent court, created by the Constitution, and no one has any right, power, privilege or authority to interfere with it in the transaction of its business. The judge of the court is required to exercise his own judgment and discretion in the establishment of rules for the court over which he presides.

29. The administration of justice in relation to the disposition of the cases before it is the business of the court.

30. Said Rule Part 3rd. is authorized to prevent interference with the business of the court.

31. Said Rule Part 3rd. is authorized to protect the rights of privacy, the liberties of silence, and the right of security of person, as to those under its protection.

32. Said Rule Part 3rd. is authorized to protect the rights of property in voice and sayings, and in the portraiture of their persons, as to those under its protection.

33. Said Rule Part 3rd. is authorized to prevent the court from being degraded, to prevent a show and circus being made of its proceedings, to prevent the creation of a misconception of judicial proceedings in the minds of parties, witnesses, jurors, and the general public.

34. Said Rule Part 3rd. is authorized to the end that conduct in the precincts of the court shall during its sessions and in relation to those in attendance be in keeping with the solemnity and importance as well as the dignity of the proceedings.

35. Said Rule Part 3rd. is authorized so as to assure that at all times and during all trials, jurors, parties, witnesses, spectators and other participants shall have free access to the place where the court sits.

36. Said Rule Part 3rd. is authorized to assure that at all times and in all cases all persons entitled thereto in proceedings before the court, shall have the right to apply to the courts of justice, the right to a fair trial, the right to the due process of the law, and the right in cases at law to an impartial jury, as stated in 17 and 18 above.

37. Said Rule Part 3rd. is authorized to prevent the poisoning of the stream of justice during the trial of any case in said Division.

38. Said Rule Part 3rd. is authorized in the proper administration of justice for each and all the reasons stated above.

39. Said Rule Part 3rd. is complementary of Rule 27, adopted April 20, 1951, in the respects referred to in 30

through 37, and is authorized so that Rule 27 may not be rendered largely ineffective by the practices here claimed by plaintiffs and forbidden by Part 3rd.

40. Neither plaintiff is entitled to any declaration as alleged and contended by the plaintiffs in their petition for declaratory judgment.

General Conclusion

The Court holds that plaintiffs' contentions have no merit.

The Court, upon full, careful and deliberate reconsideration of the legality, desirability and propriety of said Rule Part 3rd. holds that said Rule Part 3rd. is lawful, desirable and proper in every respect, and it is continued in force.

Final Judgment and Decree

Wherefore, it is considered, ordered and adjudged by the Court, that T. Ralph Grimes, as Sheriff of Fulton County, Georgia, and the State of Georgia, by Paul Webb, Solicitor General of the Atlanta Judicial Circuit, for the use of the offices of the Court and as provided by law, do have and recover of Atlanta Newspapers, Inc., a corporation of Fulton County, Georgia, and of Georgia Press Association, a Georgia corporation, and of Marion Johnson, the sum of $.....costs in this behalf incurred, to be taxed by the Clerk of this Court.

This 14 day of April, 1959.

(s) Durwood T. Pye
Judge, Superior Court,
Atlanta Judicial Circuit.